Chapter 5
ACQUISITION MANAGEMENT

INDIAN HEALTH MANUAL PART 5, CHAPTER S-PART 2, ACQUISITION MANAGEMENT

TABLE OF CONTENTS

Section

12 AUTOMATED DATA PROCESSING AND TELECOMMUNICATIONS CONTRACTING.....l2-1
13 ACQUISITION OF HEALTH CARE SERVICES.....13-1
14 URBAN PROJECTS--CONRACTS..... 14-l
15 UNAUTHORIZED COMMENTS 15-1
16 CONTRACT PROTEST,DISPUTES,AND APPEALS 16- 1
17 POST-AWARD GUIDANCE 17-1
18 LEASING AUTHORITY..... 18-1
19 SELF-DETERMINATION CONTRACTS 19- 1
20 TRIBAL SELF-GOVERNANCE CONTRACTS.....20-1
21 GLOSSARY.....21-1
22 INDEX.....22-1

5-5 12 AUTOMATED DATA PROCESSING AND TELECOMMUNICATIONS CONTRACTING

Note. IHS acquisition of automated data processing and telecommunications equipment and services represents one of several procurement "special situations" for which special policies and procedures are prescribed.

Federal Regulations governing the acquisition of automated data processing and telecommunications equipment and services, as well as other Federal Information Processing (FIP) resources, are found in the Federal Information Resources Management Regulation (FIRMR) published as 41 CFR 201 and in the HHSAR Part 339.70.

These Federal regulations reflect the requirements of Public Law 92-582, which is commonly referred to as the "Brooks Act. " The remainder of this Section of Chapter 5 is comprised of the text of IHM, Part 5 Management Services, Chapter 17-Acquisition of FIP Resources.

Acquisition of Federal Information Processing Resources

Table of Contents

A. Introduction
- Purpose
- Background
- Policy

B. Definitions
- Agency Procurement Request
- Delegation of Procurement Authority
- Federal Information Processing Resources
- Full and Open Competition
- Justification for Other than Full and Open Competition
- Requirements Analysis

C. Organizational Responsibilities
- Requestor or Project Officer
- Information System Coordinator
- Area Telecommunications Liaison
- Property Management Officer
- Area Security Officer
- Financial Management Officer
- Contracting Officer
- Office of Information Resource Management

D. Delegation of Authority
- The IHS Delegation of Procurement Authority
- The Delegation to the Area Directors (With the Exception of those Areas who have been Specifically Notified)
- General Guidance

E. Contracting Methods
- Small Purchase
- Sealed Bidding
- Contracting by Negotiation

Acauisition of Federal Information Processing Resources
Table of Contents - continued

F. Thresholds
Up to $25,000 Open Market, Small Purchase
Up to 50,000 GSA Non-Mandatory Schedule
Over $25.000 Open Market - Sealed Bidding or Contracting by Negotiation
Over $50,000 to Maximum Order Limitation

G. Acquisition Strategy
Full and Open Competition
Other than Full and Open Competition

H. Instructions for Small Purchases and Other Simplified Purchase Procedures
Simplified Small Purchases
Small Purchases for FIP Equipment and Software
Small Purchases for Telecommunications Resources on GSA Mandatory Schedule or Open Market
Contracts for all FIP Resources over $50,000

I. Request for Contract
Sealed Bidding
Contracting by Negotiation

J. Preparing a Request for Contract (RFC)
Program Requirements
Statement of Work
Requirements for a Contract Package

Exhibit 5.5-17-A "HHS 393, Purchase/Service/Stock Requisition"

5-5.12 AUTOMATED DATA PROCESSING AND TELECOMMUNICATIONS CONTRACTING

A. Introduction.

(1) Purpose. This section provides procedures and guidance for the Indian Health Service (IHS) staff to acquire Federal Information Processing (FIP) resources. The FIP resources include automated data processing (ADP) equipment, telecommunications equipment, facsimile equipment, video conferencing equipment, ADP, and telecommunications software (see 5-17.2C, Definitions). This chapter and the delegation of authority provided to the Area Directors July 28, 1994, provides the framework to procure FIP resources. This guide is to be used by anyone in IHS who wishes to acquire FIP resources, It provides a general overview of the process and requirements for contracting and information resource management personnel.

(2) Backaround. The Brooks Act, Public Law (P.L.) 89-306 of 1965 established basic policy for the management of automatic data processing equipment (ADPE). The General Services Administration (GSA) is responsible for the efficient, economic acquisition and utilization of FIP resources by Federal agencies and manages this process according to the Federal Information Resources Management Regulations (FIRMR).

Federal agencies through FIRMR regulations, are given delegated procurement authority (DPA) to acquire FIP resources. The DPA authority for all the IHS FIP resources'has been delegated to the Associate Director, Office of Information Resources Management (OIRM). Additional authority and responsibility has also been redelegated to the Area Directors of the IHS who may redelegate to the Area information systems coordinators (ISC's).

The following are other Federal laws, regulations, and directives that impact the acquisition of FIP resources:

a. Competition in Contracting Act of 1984 (CICA) (P.L. 98-369);

b. Computer Security Act of 1987 (P.L. 100-235);

c. OMB Circular A-130, "Management of Federal Information Resources" and OMB Circular Number A-71., "Responsibilities for the Administration and Management of Automatic Data Processing Activities; "

d. Paperwork Reduction Act, 1980 (P.L. 96-511);

(S-S.12 (A) Continued)

e. Privacy Act of 1974 (P.L. 93-579);

f. Federal Acquisitions Regulation (FAR);

g. Federal Information Resources Management Regulations (FIRMR) and Bulletins;

h. Health and Human Services Acquisition Regulation (HHSAR);

i. PHS Information Resources Management Manual (IRM);

j. HHS IRM Circular #8, Agency Procurement Requests;

k. Indian Self-Determination and Education Assistance Act (P.L. 93-638);

l. Indian Self-Determination and Education Assistance Act Amendments of 1988 (P.L. 100-472);

m. Buy Indian Act Authority (25 United States Codes 47);

n. FIRMR Bulletin C-35, Energy Efficient Microcomputers and Associated Computer Equipment.

(3) Policy.l be the policy of the IHS that all FIP acquisitions comply with current applicable policies, laws, and regulations.

Full and Open Competition and "Buy Indian" authorities must be used to the maximum practical extent.

Areas shall not fragment requirements for FIP resources in order to circumvent established DPA thresholds. Fragmenting is splitting requirements into several purchases to circumvent established thresholds.

The Headquarters and Area program personnel shall coordinate their actions for each anticipated acquisition of FIP **resources** with their ISC. The ISC is the Area and Headquarters main point of contact for FIP acquisitions. The ISC coordinates the acquisition with the Area property management officer (PMO) and CO.

(5-5.12 (A) Continued)

The FIP requests should be reviewed for consolidation of resources, compliance with OIRM plans, and compliance with the regulations and guidelines set forth in this chapter. The Associate Director, OIRM issues standards and policy guidance to the Area telecommunications liaisons and the ISC's on the acquisition and implementation of FIP resources. These policies also shall provide guidance regarding availability, applicability, and requirements for National contracts.

B. Definitions.

(1) Agency Procurement Request (APR) - The APR is a request for the granting of a DPA to acquire FIP resources.

(2) Delegation of Procurement Authority (DPA) - For small purchases, on the Standard Form HHS-393, the Area ISC or Associate Director, OIRM, approves the DPA authorizing the contracting officer to approve the acquisition.

For a request for a contract (RFC), the DPA is a memorandum authorizing the purchase of a requirement within a specific dollar limitation, assigning responsibility and reporting requirements.

(3) Federal Information Processing (FIP) Resources - Any equipment or interconnected system or sub-systems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching interchange, transmission, and telecommunications equipment, software, services, support services, maintenance, and supplies.

(4) Full and Open Competition - Means that all responsible sources are permitted to compete. The awarding of a contract is then made based upon the evaluated results of this vendor competition.

(5) Justification for Other than Full and Open Competition (JOFOC) - A justification explaining why only one responsible source can meet the requirement, or why only a specific make and model will satisfy the requirement. Specific make and model specifications should be used if no other type of specification can satisfy the requirement.

(S-5.12 (A) Continued)

(6) Requirements Analysis - A document that is prepared by the program which provides the basis on which the alternatives for meeting the requirements can be analyzed. Each requirements analysis is documented commensurate with the size and complexity of the need (Refer to FIRMR 201-20.1).

C. Organizational Responsibilities.

(1) Requester or Project Officer. The requester is the "initiator" of the procurement. The requester is responsible for procurement related research and paperwork. The PO is the program's representative to ensure that program requirements are clearly defined and ensure that the contract is designed to specifically meet those requirements.

POs establish quality standards, requirements, completion, and delivery schedules, as well as ensure that they are adhered to.

(2) Information System Coordinator USC). Information System Coordinator (ISC) is the FIP resources technical representative within an IHS Area or Headquarters who is responsible for coordinating FIP resource requirements with the Office of Information Resources Management (OIRM). The ISC is appointed by the Area Director or Associate Director Office at Information Resources Management as the person who can fulfti the requirements of this chapter. The IX is the information resources management (IRM) technical liaison between their Area and Headquarters and who maintains FIP records.

In addition, to IRM management efforts, the ISC has the following specific responsibilities in support of ADP acquisitions.

a. Participating in IHS FIP resources strategic planning as it relates to Area/Headquarters acquisitions.

b. Reviewing and approving/disapproving FIP resource acquisition requests for conformance with IHS technical standards and the strategic and tactical plan submitted each year. For FIP acquisitions, the request is reviewed by the ISC for compatibility with IHS FIP activities.

(5-5.12 (C) Continued)

For telecommunication acquisitions, the ISC obtains the concurrence of the Area telecommunications liaison and may require obtaining the concurrence of the Director, Division of Telecommunications Management (DTM), OIRM.

Prior to submitting the request to the contracting office, the ISC ensures supporting documentation for each FIP request is complete. This includes: verifying all necessary components of the system have been listed on the requisition; price/cost quote is mathematically correct; that the reference person identified on the requisition is the technical contact person, and that the salient characteristics outlined in the requisition, or in the acquisition package, accurately identify what is needed to meet the requirements.

C. Maintain records on each acquisition. Determine if resource can be acquired within the Area or forward to Headquarters East for processing. The ISC is responsible for coordination of these records with the property management officer (PMO) so that the value of the property is recorded.

Since FIP property may be obtained from National contracts as well as contracts within the Area, the ISC has the responsibility to work with the PM0 to reflect that FIP property received in the Area (from National contracts, Area contracts, transfer of property, or Area purchases) are recorded as property.

For delivery to the Areas from National contracts, there is no property transfer, the receipt of the property takes place in the Areas. The PM0 may not have signed the HHS 393 and may not be aware of the pending delivery. In which case, the ISC is responsible'to coordinate the acquisition with the PMO. The ISC also has the responsibility to make these records available to the Area contracting officers and to OIRM.

(3) Area Telecommunications Liaison. Area telecommunications liaison (ATL) works with the ISC and is responsible for managing all voice video, facsimile, or radio communications systems for all service units, hospitals, and health facilities within their assigned IHS Area boundary. The ATL is responsible for coordinating the acquisition activity and obtaining the approval of Director, Division of Telecommunications, OIRM.

(5.5-12 (0 Continued)

(4) Property Management Officer (PMO). Property Management Officer (PMO) is responsible for ensuring that there is no excess property available within IHS that could fulfill the requirement being requested and for recording the property as it is received. As mentioned the PM0 and the ISC shall work together on determining value and acceptance of FIP property.

(5) Area Security Officer. Area Security Officer is responsible for ensuring that each acquisition request complies with IHS requirements for security, standards, and internal controls. The security officer must determine the security level of each system requested before the ISC approves the procurement.

(6) Financial Management Officer. Financial Management Officer is responsible for ensuring that the funds are available, verifies the appropriation numbers, CAN numbers, and the object classification codes.

(7) Contracting Officer. The CO signs on behalf of the Government and is legally responsible for the contract. They alone can take action to enter into, terminate, or change a contractual commitment on behalf of the Government.

(8) Office of Information Resource Management (OIRM). Office of Information Resource Management (OIRM) is responsible to provide Agency-wide. FIP resources oversight and guidance under the direction of the Associate Director. The OIRM plans and implements major FIP acquisitions by utilizing staff from the OIRM's Divisions. The systems acquisitions staff, OIRM provides guidance for these acquisitions and provides or reviews alternatives.

The DTM, OIRM, in Albuquerque, New Mexico, issues agency-wide telecommunications standards. The DTM reviews and recommends approval/disapproval of major telecommunications acquisition requests for IHS and provides alternatives to the programs.

The Division of Systems Management issues standards for resources and patient management software and hardware.

D. Delegation of Procurement Authority (DPA)

(1) The IHS Delegation of Procurement Authority:

/5-5.12 (D) Continued!

The following is a reiteration of the DPA's and pertain to all FIP resources acquisitions including P.L. 93-638 contracts for the IHS Headquarters and Area Offices:

a. For competitive acquisition of FIP resources, the delegated authority is $2.5 million.

b. For noncompetitive acquisition of FIP resources, the delegated authority is $250,000.

The above DPA is defined by HHS IRM Circular #8.

The Area Directors have been redelegated a portion of this authority and may redelegate this to the ISC's within their Areas. The ISC will maintain control with appropriate records indicating what has been approved and procured. Refer to Manual Exhibit 5.5-12-B for the current IHS Area authority and responsibility.

For FIP resources acquisitions that exceed the above delegated authority level, (as stated in this Subsection), IHS officials will continue to seek specific acquisition delegations in accordance with existing GSA, HHS, and PHS Information Resources Management (IRM) policies. GSA approval is required when IHS is seeking authority to contract for FIP Services or FIP Support Services, and the total contract cost exceeds $2.5 million for competitive procurements, or $250,000 for noncompetitive procurements, even if the Annual Contract Cost is not exceeded.

With this increased authority comes the responsibility to comply with the applicable GSA policies, presented in the Federal Information Resources Management Regulations, HHS policies presented in the HHS IRM Manual and supplemented by the HHS IRM Circular series, and PHS IRM policies, presented in the PHS IRM Manual. Compliance with all of these policies will be monitored through triennial reviews of the IRM programs of the IHS.

(2) General Guidance.

Acquisition requests whose total dollar amount is more than the small purchase dollar limitation can not be broken down into several purchases that are less than the small purchase limit merely to permit purchase under small purchase procedures.

(5-5.12 (D) Continued)

All FTP resource acquisitions expected to exceed IHS threshold shall be prepared for approval by MIS and/or GSA depending upon the dollar amount according to instructions in DHHS IRM Circular #8.

E. Contracting Methods. The total dollar amount of the acquisition request and the specificity of the scope of work determines the appropriate method of contracting. The requester must identify and justify each requirement and prepare the appropriate documentation and Government cost estimate.

The following contracting methods are required for the acquisition of ADP and telecommunications supplies, hardware, software, support services, and maintenance:

(1) Small Purchase;

(2) Sealed Bidding;

(3) Contracting by Negotiation.

F. Thresholds. Depending upon the total dollar amount and the method of procurement, different procedures are required.

The following are the dollar thresholds:

(1) Up to $25,000 Open Market - Small Purchase

(2) Up to $50,000 GSA Non-mandatory Schedule - Small Purchase

(3) Over $25,000 Open Market - Sealed Bidding or Contracting by Negotiation

(4) Over $50,000 to Maximum Order Limitation (MOL) on GSA Non-mandatory Schedule - This shall be advertised in the Commerce Business Daily (CBD) as an intent to place an order against a GSA non-mandatory schedule. A determination on how the requirements will be processed can be made after responses from the advertisement in the CBD are reviewed.

If the requirement can be purchased from a GSA non-mandatory schedule at the lowest overall cost to the Government, an order will be placed against the non-mandatory schedule contract.

15.512 (F) Continued)

If there were responses from the CBD that indicate the overall cost of the requirement can be acquired for less than the GSA non-mandatory schedule price on the. open market, it will be. processed as a sealed bid or a negotiated contract:

G. Acquisition Strategy. A coordinated effort shall be made between the program, the ISC, OIRM, 'and the contracting officer to determine whether the appropriate acquisitions approach shall be through Full and Open Competition "Buy Indian" or Other than Full and Open Competition. **The** preferred method is Full and Open Competition and "Buy Indian". For contracts subject to P.L. 93-638 regulations, the contracting officer will determine the appropriate acquisition approach.

(1) 1 Full and Open Comnetition.

Full and Open Competition is applicable when:

a. At least two or more manufacturers' products can satisfy the minimum requirements; or

b. Requested FIP resources are described using functional specifications, equipment performance specifications, design specifications, software, and equipment plug-to-plug compatible functionally equivalent specifications, or brand name or equal specifications.

(2) Other than Full and Open Competition (JOFOC).

The following are required for Other than Full and Open Competition (JOFOC):

a. Application:

JOFOC is applicable when:

(i) Only one responsible source can satisfy the requirement; or

(ii)) When only one. specific make and model can satisfy the requirement.

b. Format - Elements Required:

0)For : (Specify the Agency and contracting activity.)

155.12 (G) Continued)

(ii) Purpose: (Nature and/or purpose of the action.)

(iii) Description: (A description of the supplies or services required to meet the Agency's need.)

(iv) Authority: (The identification of the statutory authority permitting other than full and open competition.) (See 48 Code of Federal Regulations 306.3, FIRMR 201-39.601 and FAR 6 . 3 0 2 .)

Example: The statutory authority citation for specific make and model is 40 United States Codes 759(g) as amended by P.L. 99-500, FIRMR 201-39.601-3.

W Unique Qualifications: (A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority.)

(vi) Other Sources: (A description of efforts made to ensure that offers are solicited from as many potential sources as practicable, including whether a CBD announcement was or will be publicized. Include description of the market survey conducted and the result, or a statement of the reasons a market survey was not conducted.)

(vii) costs.

(viii) Other Factor: (Any other factors supporting the use of other than full and open competition.)

C. Recommendations and Approval for the JOFOC between $50.0 and $100.000.

The following recommendations and concurrences are required for the JOFOC between $50,000 and $100,000:

Concur: PO's Immediate Supervisor's signature and date

Concur: Information Systems Coordinator's signature and date

(5-S. 12 (G) Continued)

Concur: CO's signature and date

Approval: Principal Official Responsible for Acquisition (PORA)

c. Recommendations and Approval of the JOFOC over $100.000.

The recommendations and concurrences of the JOFOC over $100,000 are same as above, except the PORA would give concurrence and approval would be given by the Competition Advocate.

H. Instructions for Small Purchases and Other Simplified Purchase Procedures.

(1) Simplified Small Purchases. Small purchases are generally used for acquisitions of $25,000 or less on the Open Market and $50,000 or less for non-mandatory GSA Schedule purchases. The acquisition can be accomplished by using one of the following simplified small purchase procedures:

a. Purchase Order: A Fixed Price offer made by the Government to buy FIP Resources upon specified terms and conditions. The purchase order does not become a contract until the contractor indicates acceptance.

b. Imprest Funds (also known as Petty Cash Fund): May or may not be used for specific purchases up to a specified threshold. (Contract contracting office for additional guidance.)

c. Blanket Purchase Agreement (BPA): Is a simplified method of filling anticipated repetitive needs for supplies or services/maintenance by establishing "charge accounts" with qualified sources of supply. BPA's are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase orders.

The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. The BPA is a method of implifying the making of individual small purchases and shall not be used to avoid the small purchase limitation of $25,000 open market or maximum order limitation for GSA Schedule items. The contracting officer will provide the BPA guidelines.

15-5.12 (H) Continued)

(2) Small Purchases for FIP Equipment and Software.

Small purchases for FIP Equipment and Software (Competitive or GSA Schedule and Noncompetitive).

a. Reguirements under $2500:

Prepare the HHS-393 as shown in Appendix A stating the need and how it will be used. In addition, a brand of justification must be included as to why the brand being requested was selected or indicate "or equal" on the HHS-393 after the description (minimum requirements). Indicate the GSA Schedule number if applicable. Obtain internal approval signatures, i.e., requester, property management, and funds availability, and submit to the ISC for processing.

b. Over $2.500 and UD to $25.000 Open Market and UD to $50.000 GSA Non-mandatorv Schedule (Federal SUDD~Y Schedule):

Prepare the HHS-393 as shown in Appendix A, when an acquisition is greater than $2,500, but less than $25,000 (either on the Open Market or on GSA Schedule). If the acquisition is between $25,000 and $50,000, the items must be on a GSA schedule to be processed as a small purchase. The following items are required in these acquisitions:

(9 Requesting Office: Is the originating office and organizational relationship. Be sure to include the complete mailing address, contact person, and telephone number.

(ii) Current Practices: Briefly describe the methods and procedures currently used in accomplishing the activities performed. Identify current problems that will be solved by acquiring new or additional resources. Describe the present equipment and software being used, if applicable.

(5-S. 12 (H) Continued)

(iv) Justification and -Anticiuated Benefits: Indicate how the requested information resources will be used. If applicable, identify and associated. hardwa&or software. Identify the organizational area supported. Specify Agency programs and/or projects that will be supported. Describe the anticipated benefits.. ,Include benefits that could result in cost : reductions, increases in tiork force productivity, and other benefits not measurable in dollar value.

W Alternatives: Provide a comparison showing that an evaluation was-performed of at least one other alternative and the alternative of choice is the most advantageous to the Government.

(vi) Acouisition Strategy: The acquisition strategy determination should be to fulfill the requirement, in the best interest of the Government. Full and Open Competition is the most desirable method, however, there may be more restrictive requirements and in which case a JOFOC would be ***more*** appropriate.

The following acquisition strategies are to be used:

(a) Cost/Brand Comparison: When at least 3 different manufacture's products can satisfy the minimum requirement, indicate the configuration required, the companies contacted, the brand quoting on, sales representative, telephone number, and the price for each.

(b) Brand Name or .Equal: .Provie the salient characteristics of 'the brand name so that the procurement office can compete with brands with equal specifications.

(c) Snecific Make and Model: Provide a JOFOC if there is only one source that can fulfill the requirement, or only one specific make and mode! will meet the minimum requirement: The procurement office will

15-5.12 (H) Continued)

compete with different vendors that carry that specific make and model.

(vii) Certification: The following elements should be included in all procurement requests:

I certify that the following criteria has been met in determining the need for the requested items:

(4) The items are absolutely essential to program needs.

(b) The items requested are the least expensive that will satisfy the need of the requesting program.

03 The items meet initial use of replacement standards.

00 There are no other items available, either from equipment pools or unrequired sources within the Area/Office that will meet the program needs.

03 Staff is now or will be qualified to utilize the requested items.

Area/Office Information Systems Coordinator

Signature Date

Typed Name and Title

(3) For All Small Purchases for Telecommunication Resources on GSA Non-mandatory Shedule or Oen Market. The procedures are the same as Section 5-17.88 except:

a. The Areas must have the Area Telecommunications Liaison approvals.

b. Headquarters-West OIRM, Division of Telecommunications Management will review the request if it involves the procurement of a telephone system and forward the request to the Area ISC. The Area ISC will forward the request to the appropriate Contracting Office.

(S-S.12 (H) Continued)

(4) Orders against GSA Non-mandatorv Schedule Contracts for all FIP Resources over $50.000. The HHS-393 is prepared along with the justification as indicated in Appendix No. 2 including the acquisition strategy, i.e., comparison of brands on GSA Schedule or JOFGC, and a technical description of the requirement. This description will be incorporated in an announcement that will appear in the CBD to publicize the intent to place an order against a GSA non-mandatory schedule.

If no capable sources respond within 15 calendar days after publication, a purchase order will be processed. If there are responses from capable sources, it may be necessary to proceed with a sealed bid or a negotiated acquisition. NOTE: If it has been determined that a JOFOC is required, a separate signature page must be prepared.

I. Request for Contract.

(1) Sealed Bidding.

Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards.

The following four conditions must exist if sealed bidding is used:

a. Time permits the solicitation, submission, and evaluation of sealed bids.

b. The award can be made on the basis of price and other price-related factors.

c. It is not necessary to conduct discussions with the responding offerors.

d. There is a reasonable expectation of receiving more than one sealed bid. This determination is made by the CO.

Since no discussions will be conducted, it is necessary that sealed bidding be prepared describing the Government's requirements clearly, accurately, and completely.

(2) Contracting by Negotiation.

55-5.12 (I) Continued

Contracting by negotiation is used when any of the four conditions allowing sealed bidding are absent. Contracting by negotiation is a procedure involving the receipt of proposals from offerors, permits negotiations with the offerors, and usually afford offerors an opportunity to revise their offers before award of a contract.

J. Preparing: a Request for Contract (RFC).
(Sealed bidding or Contracting by Negotiation)

(1) Program Requirements. Once program requirements have been identified and defined, the PO should coordinate planning efforts with OIRM. The requests for contracts (RFC) must be prepared by the program office for all proposed acquisitions submitted to the ISC and follow the format stated in the HHSAR Subpart 3 15.70.

(2) Statement of Work. The statement of work (SOW) is the most critical document in the acquisition process. It describes the work to be performed or the services to be provided; defines the responsibilities of the Government and the contractor; and provides an objective measure so that both the Government and the contractor will know when the work is complete and payment is justified.

If the SOW does not clearly say what is required, many problems can arise in the award and management of a contract. Ambiguous work statements can result in unsatisfactory performance, delays, disputes, and higher costs. The SOW always describes the objective, purpose, nature, and detailed requirements of the work to be done.

(3) Requirements for a Contract Package (RFC). The RFC package must contain the following:

a. HHS 393.

b. Acquisition Planning Document (ADP): For all new negotiated acquisitions whose system life costs are expected to exceed $100,000. This should be done at the same time as an Agency Procurement Request.

(S-5.12 (J) Continued)

c. Agency Procurement Request: The HHS IRM Circular #8 establishes the procedures to follow and an APR is required in IHS for any contract action over the small purchase thresholds.

d. Delegation of Procurement Authority approval.

e. Requirements Analysis: The FIRMR Sub Part 201-20.1 prescribes the policies and procedures to follow in the preparation of the requirements analysis.

f. Project Officer's Certification Memorandum: The CO can provide this document.

g* Justification for Other than Full and Open Connetition (JOFOC): If applicable (see 5-17.7B).

h. Statement of work.

i. Evaluation Criteria: The HHSAR 315.406-5(c) provides guidance for preparing the evaluation criteria.

j. Schedule of Deliverables and Pavments.

k. Government Cost Estimate: This is the Government's assessment of the probable cost of the supplies or services to be acquired. It analyzes the individual cost elements of the requirement.

In addition to the FAR, FIRMR, IRM, and HHSAR, the HHS Proiect Officer's Contracting Handbook provides guidance in the preparation of a RFC.

5-5.13 ACQUISITION OF HEALTH CARE SERVICES.

Note. This Section of Chapter 5 concerns the acquisition of health care services commonly termed "contract health services." This Section is comprised of the iext of the IHM, Part 2 - Services to Indians and Others, Chapter 2 - Acquisition of Health Care Services. The text of this IHM Chapter follows.

ACQUISITION OF HEALTH CARE SERVICES

Table of Contents

5-5.13. A Purpose
B. IHS Policies
C. Definitions
D. Authorities and Oversight
E. Alternate Resources
F. Non-Personal Services
G. IHS Payment Policy - Reimbursement Rates for Health Care Services
H . Exception Process for Pricing Exceeding That of the IHS Medicare Rate Ceiling
I. Type/Source of Funding
J. Types of Health Care Services/Supplies
K. Sub-Object Class Codes Processed and Paid by the IHS FI
L. Pricing Methodologies
M. Responsibility Factors/Minimum Acceptable Qualifications of Non-IHS Health Care Providers
N. Malpractice
0. Types of Instruments to Purchase Health Care Services
Publicizing Acquisition Actions
: . Non-Competitive Solicitations
R. Types of Formal Agreements (Excluding Contracts)
S. Use of Sealed Bidding Procedures (FAR Part 14 and HHSAR Part 314)
T. Procedures for Contracting by Negotiation
U. Evaluation Factors
V. Special Standards of Responsibility -- FAR 9.104.2 (Responsibility Factors)
w. Technical Evaluation
X. Reasonableness of Price
Y. Geographic Coverage
2. Use of Options
AA. Contract Price Adjustments
BB. Payment Guidance
cc. Prompt Payment
DD. Fiscal Intermediary
EE. Contract Payment Disputes and Appeals
FF. Administration
GG. Expert Witnesses
HH. Language for Medical Contract Instruments

5-5.13 ACQUISITION OF HEALTH CARE SERVICES

A. Purpose. This section provides Indian Health Service (IHS) policies and procedures for the acquisition of health care services. The IHS purchases health care services in two situations. The first situation involves the purchase of health care services from non-IHS medical providers (e.g., facilities and medical professionals.) The second situation occurs when the IHS arranges for non-IHS health care providers to deliver services in an IHS facility.

B. IHS Policies.

(1) The policy of the IHS is to acquire health care services by formal agreement when the following criteria are present:

a. The required service cannot be supplied by government personnel in IHS facilities or by hire through normal Civil Service employment procedures, and

b. The services to be obtained are determined to be non-personal in nature in accordance with Federal Acquisition Regulation (FAR) 37.1.

(2) It is the policy of the IHS to obtain health care services through the use of competitive procedures to the maximum extent practicable within the parameters of the IHS Payment Policy (Federal Register Vol. 51 No. 125, Monday, June 30, 1986, pages 23540-41). See Section 7-- Procurement Contracts -- General, of this Chapter, for additional information.

(3) The IHS is the "payor of last resort" for persons defined as eligible for contract health services notwithstanding any State or local law or regulation to the contrary (Federal Register Vol. 55, No. 28, Friday, February 9, 1990). See Subsection 5 -- Alternate Resources, of this Section, for further information.

C. Definitions. Definitions are provided to assist IHS personnel in understanding the terminology used in the health care industry and as applied throughout the IHS.

(1) Acute Care - Short-term health care; a level of care that can be rendered only in a hospital.

(2) Admission - A discrete episode of inpatient hospitalization.

(5-5.13 (0 Continued1

(3) Allowable Costs - Costs incurred by a provider in the course of providing services that are recognized as reasonable by the Indian Health Service or a third-party payor.

(4) Assignment (Medicare) - Provider accepts the Medicare approved charge as payment in full. Providers accepting assignment receive payment directly from Medicare. When providers choose not to accept assignment, payment is sent directly to the patient.

(5) Average Length of Stay - The average stay count, by days, of all or a class of inpatients discharged over a given period, calculated by dividing the number of inpatient days by the number of discharges,

(6) Bundling - The practice of combining the services of different providers into one claim to a payer; in the case of Medicare, it currently includes combining services of non-physician providers inside and outside a hospital into the hospital claim, which is paid under ***one*** diagnosis-related group. Bundling can also refer to combining multiple services into a single procedure, so that correct pricing can occur.

(7) Case Mix - The categories of patients, classified by disease, procedure, method of payment, or other characteristics, in an institution at a given time, usually measured by counting or aggregating groups of patients sharing one or more characteristics; a relative measure of the complexity of the services required by each category of patients.

(8) Claim - A billing or adjustment to such bill for payment submitted on the appropriate form or through a method of automated transmission developed for direct entry into the Fiscal Intermediary's (FIs) claim processing system.

(9) Contract Health Services (CHS) - Health services provided at the expense of the IHS from public or private medical, or hospital facilities, or providers other than those of the IHS or those funded by the IHS.

(10) Conversion Factor - A monetary multiplier that converts relative value units into payment amounts.

(11) Cost Outlier - A patient whose cost of treatment exceeds a provider-specific amount of the Medicare rate for the diagnosis-related group into which the patient is assigned.

(5-5.13 (C) Continued)

(12) Cost-to-Charge Ratio - The proportional relationship of third-party payer allowable costs to total providers charges applied to total operating costs in a hospital operating department for cost-finding purposes.

(13) Covered Services - Those services and supplies provided by the Hosl .ral or other provider, which are benefits payable under an IHS contract or purchase order.

(14) Day Outlier - A case in which the length of stay exceeds the upper threshold length of stay for diagnosis-related group.

(15) Diagnosis - Descriptive term of the patient's condition, which is coded according to the International Classiflcation of Diseases, 9th Revision, Clinical Modification.

(16) DRG - An acronym for the Medicare Diagnosis Related Group which is a classification of clinically homogenous admissions having approximately the same resource intensity. A DRG is determined based on diagnostic and other information that is available on the claim, using the Medicare DRG methodology.

(17) DRG Weight - An index number that reflects the relative resource consumption associated with each diagnosis-related group.

(18) Disproportionate Share - An add-on to Medicare reimbursement rates reflecting Additional costs incurred by providers who serve a significantly disproportionate number of low income patients and/or significant number of Title XVIII patients.

(19) FAR - Federal Acquisition Regulation. The primary regulation used by all Federal agencies in the acquisition of supplies and services.

(20) Fee Schedule - A listing of fees or allowances for specific medical procedures, which usually represents the maximum amounts that the IHS will pay for specified procedures.

(2.) Fiscal Intermediary (FI) - A plan, private insurance company, or other public or private agency selected by IHS to pay claims. The authority for a fiscal agent is contained in the Consolidated Omnibus Budget Reconcilia n Act of 1985, Public Law 99-272, Section 17003: ". . .provides authority for the e Department of Health and Human Services to contract with fliscal agents to perform claims payment, process :ing and audit functions with respect to services purchased

(5-5.13 (C) Continued)

on a contract basis by the Public Health Service.. . . Fiscal agents must either be entities which could qualify as carriers for Medicare purposes, or Indian tribes or tribal organizations acting under Indian Self-Determination Act contracts. While the fiscal agents need not be Medicare carriers, they must meet the same requirements as Medicare carriers regarding efficiency and effectiveness of operations, surety bonds, and financial controls. "

(22) Formal Agreement - Refers to contracts, rate quotes, purchase orders, or other methods of determining IHS payments for medical services.

(23) Grouper - A computer software program that uses clinical and other information to classify cases into the proper DRG.

(24) HCFA - An acronym for the Health Care Financing Administration. HCFA is the agency of the Federal Government responsible for administering the Medicare and Medicaid programs.

(25) HHSAR - Establishes uniform acquisition policies and procedures for HHS which conform to the FAR.

(26) IHS Facility - A facility that is operated, owned, leased, or donated to the Indian Health Service and contains space which is primarily for IHS use to provide direct and/or contract clinical treatment services to eligible Indian consumers.

(27) IHS Beneficiary - A person eligible for benefits, as determined by the Indian Health Service.

(28) Interim Rate - The Medicare Periodic Interim Payment (PIP) programs pays providers an interim amount based on expected costs. A settlement process after the year-end determines final payment amounts. Similarly, an outpatient interim "cost-to-charge" ratio is used to price outpatient services until the final cost-to-charge ratio is determined during a retrospective settlement process.

(29) Length of Stay - The number of calendar days that elapse between a patient's admission and discharge; determined by subtracting the admission date from the discharge date.

(30) Locum Tenens - A person providing professional services who is temporarily taking the place of another.

[S-S. 13 0 Continued)

(31) Medicare Fee Schedule (MFS) - The payment system for provider services (Medicare Part A & B). The payment amount is determined on a relative value scale that has components for work, practice expense (excluding malpractice), and malpractice expense. The sum of the Relative Value Unit (RVU) is multiplied by the conversion factor to calculate the payment amount.

(32) Medicare Part A - The hospital insurance program portion of Medicare which automatically enrolls all persons aged 65 and over entitled to benefits under the Old Age, Survivors, Disability, and Health Insurance Program or Railroad Retirement; all persons under 65 who have been eligible for disability for more than two years; and insured workers and their dependents needing renal dialysis or kidney ~transplantation.

(33) Medicare Part B - This is a voluntary portion of Medicare which includes physician services in which all persons entitled to Part A may enroll on a monthly premium basis.

(34) Medically Necessary Services - Those services ***or*** supplies provided by a hospital, a physician, or other provider of health care services, to diagnose or treat an illness or injury which is:

a. Consistent with the symptom or diagnosis and treatment of the condition, disease, ailment, or injury;

b. Appropriate with regard to standards of good medical practice;

c. Not primarily for the convenience of the patient, their physician, or other provider;

d. The most appropriate supply or level of service which can be safely provided to the patient; and

e. Approved by IHS,

When applied to a patient admitted as an inpatient to p hospital, it further means that the patient's medical symptoms or condition require that the services or supplies being provided cannot be safely provided to the patient outside of the acute care inpatient hospital setting:

/5-5.13 (C) Continued)

(35) Non-Participant Physicians (NON-PARs) - Physicians who treat Medicare beneficiaries but do not have a legal agreement with Medicare to accept assignment on all Medicare services. NON-PARs may choose to accept Medicare assignment on a claim-by-claim basis. NON-PARs are paid 95% of the Medicare-approved charge, and can also bill the patient up to the "limiting charge".

(36) Ordering Officials - Those persons that the responsible IHS Contracting Officer has designated, in writing, with the authority to issue purchase-delivery orders under a contract.

(37) Outlier - A patient having either an extremely long length of stay or extraordinarily high billed charges when compared with most patient discharges classified in the same diagnosis-related group.

(38) Outlier Payments - Additional revenue for day ***or*** cost outlier additions resulting from services rendered to Medicare patients.

(39) Participating Physicians (PARS) - Physicians who sign an agreement with Medicare to accept assignment for d Medicare services provided to beneficiaries for the duration of the agreement, usually a year. PARs accept and receive 100 56 of the Medicare approved charge or fee schedule amount as payment in full (may not bill the balance to the patient).

(40) Pass-Through - A cost which is not subject to screens, ceilings, limits, or caps and is excluded from prospective payment calculations. The IHS FI calculates and pays the pass-through amount with the DRG payment, not retrospectively as Medicare does. These amounts are derived from the latest settled Medicare cost reports. The following are examples of pass throughs as defined by Medicare:

a. Capital Pass-through - A retrospective cost-based capital reimbursement system of Medicare Part A for such costs as interest and depreciation expenses.

b. Cost Pass-Through - A retrospective reimbursement based on reasonable cost of the Medicare Part A prospective payment system of capital-related costs, and direct medical education costs that are excluded from the definition of inpatient or operating costs.

(S-S. 13 (C) Continued)

(41) Per Diem - The maximum daily payment allowed for all inpatient hospital services rendered to a patient under a contract.

(42) Provider - Any hospital, physician, or medical services organization which provides services for IHS patients.

(43) Relative Value Unit IRVU) - Unit of measure designed to permit comparison of the relative amounts of sources required to perform various services, by physicians or other providers, within a single department or between similar departments in various hospitals, by assigning weight to such factors as personnel time, level of skill, and sophistication of equipment required to render service.

(44) Resource-Based Relative Value Scale (RBRVS) - **A** valuation or rating system of medical services on the basis of relative resource inputs consisting of work and other practice costs to provide medical services.

(45) Responsibility Factors or Special Standards of Responsibility - Factors to be considered when specialized experience or qualifications are needed for adequate contract performance.

(46) Sole Community Provider - A hospital that, or physician which, by reason of factors such as an isolated location or absence of other providers, is the sole source of services reasonably available to beneficiaries in a geographic area.

(47) Unbundling - The practice of billing for related services separately. Example: billing separately for removal of the uterus and each ovary rather than billing for a total abdominal hysterectomy. or when a physician orders an automated panel of laboratory tests to be performed; on one blood sample, but bills as if each of the tests was performed separately.

D. Authorities and Oversinht.

(1) Authority to execute health services ocntracts is vested in the contracting officer (CO).

The CO (or duly authorized negotiator) is the IHS official who is responsible for issuing solicitations; conducting or coordinating cost and price analysis; conducting or controlling all negotiations concerning cost or price; technical requirements; other terms and conditions; and selecting the source for contract award. These

(5-5.13 (D) Continued)

activities are conducted with advice of the technical evaluation team, the PO, and, other IHS staff members who may be called upon to assist the CO in the conduct of negotiations. See also the FAR Part 13, the HHSAR Part 3 15, and Section 3 of this Chapter for further discussion.

(2) Purchasedelivery orders for health services may only be executed by individuals who have received delegations of authority to do so from the Senior Contracting Officer for the Area. The Area Contracting Office is responsible for performing oversight to ensure that these purchases comply with Federal and Health and Human Services (HHS) acquisition regulations and IHS policies and procedures, and for working with the ordering official and service unit to correct any deficiencies identified in this oversight.

(3) Delegation of Authority to Non-Acquisition Personnel

a. Non-acquisition personnel are defined as those individuals not classified in the Procurement classification series, 1101, 1102, 1105, and 1106.

b. Only the Senior Contracting Officer or Principle Official Responsible for Acquisition (POW) may delegate CO responsibilities to non-acquisition personnel. This authority may not exceed the small purchase limitation for open market purchase.

c. Non-acquisition personnel shall be delegated only the minimum necessary responsibilities, in a written delegation from the Senior Contracting Officer (SCO).

d. Non-acquisition personnel are required to have the training, experience, and education requirements for the responsibilities assigned, prior to the delegation. Such personnel shall have a Level 1 DHHS certification.

E. Alternate Resources. The IHS is the "payor of last resort" for persons defined as eligible for contract health services notwithstanding any State or local law or regulation to the contrary.

(1) The IHS is a residual resource and not an entitlement program. In accordance with 42 CFR 36.61, IHS is the payor of last resort for individuals eligible for contract health services. As a result, payment for services provided to patients is not authorized to the extent that the patient is (1) eligible for an alternate resource (e.g.,

(5-5.13 (E) Continued)

Medicare, Medicaid, private health insurance, worker's compensation, medical payments provisions automobile or homeowners insurance policies, third party liability), (2) would be eligible for an alternate resource if he/she applied for it, or (3) would be eligible for an alternate resource under State or local law or regulation if he/she were not an IHS beneficiary.

(2) When a patient is potentially eligible for an alternate resource, the non-IHS provider(s) is (are) responsible for assisting him/her in completing application forms necessary to receive the benefit. In addition, it is the non-IHS provider's responsibility to bill all applicable alternate resources.

(3) If an alternate resource is available, its use is required and IHS or the Fiscal Intermediary (FI) shall be promptlv notified of any payment received. The FI shall pay the IHS patient liability amount for medical and dental claims involving alternate resources (third-party payers) as follows:

a. The IHS patient liability amount is defined as the amount for which the patient is held responsible after the primary resource(s) have been paid, less any IHS disallowed charges for services not authorized or covered by the IHS.

b. The contractual or regulatory restrictions or limitations imposed by the primary resource(s)/payer(s) will apply in determining the IHS patient liability amount. The IHS patient liability amount shall not exceed the amount which would have been paid by the IHS had IHS been the only payer.

c. The IHS patient liability amount is considered as the remaining balance of allowable charges after all alternate resource(s)/payer(s) have been paid, except in instances in which the provider is obligated by regulations or by contract with the primary payer(s) to accept the primary payer(s) payment as payment in full, e.g., in Medicare and Medicaid cases, payment by the federal or state agency may constitute payment in full. If there is no IHS liability for payment, no further payment shall be made.

d. If a Contract Health Services (CHS) provider is being paid through CHS funds for services performed in an IHS facility, the FI will not coordinate benefits if the IHS facility bills the primary insurer directly.

The IHS or designated FI will reject claims where it has reason to find a failure to investigate other party liability.

(S-5.13 Continued)

F. Non-personal Services.

(1) Before a contract, purchase order, or other payment arrangement is developed, a determination must be made in accordance with FAR 37.103 and Health and Human Services Acquisition Regulation (HHSAR) 337.103 that the services acquired are nonpersonal in nature, meaning that either no employer-employee relationship exists, or that the direct supervision aspects of the relationship can be minimized to where they are incidental to the services required and are for administrative guidance only. Per HHSAR 315.672(l)(9), a statement that the services are nonpersonal in nature must be included in the negotiation memorandum.

(2) Each contract shall state that:

a. The contract is a nonpersonal services contract, as defined in FAR 37.101, under which the contractor is an independent contractor; and

b. Government may evaluate the quality of professional and administrative services provided, but retains no control over the medical professional aspects of services rendered (e.g., professional judgments, diagnosis for specific medical treatment).

G. IHS Payment Policy- Reimbursement Rates for Health Care Services.

(1) The purpose of the IHS payment policy (See Federai Register Vol. 51 No. 125, June 30, 1986, pages 23540-41) is to conserve funds by purchasing health care services for beneficiaries only from those medical facilities, physicians, and other health care providers who agree to accept, as payment in full, reimbursement at rates no higher than the prevailing Medicare allowable rates (including deductibles and co-payments).

(2) It is recommended that IHS establish contracting priorities by identifying high volume providers. Competitive processes will then be used to negotiate the most favorable rates available within the Medicare rate ceiling. The policy is not intended to restrict the IHS to Medicare rates when more favorable rates may be negotiated.

(3) Medicare reimbursement methodologies, are the preferred method of pricing hospital inpatient, outpatient, provider services, and medical supplies, whenever

(5-5. 13 (G) Continued)

agreement can be reached on that basis. When such agreement cannot be reached or achieved, the available pricing alternatives are identified in Subsection 12.

(4) The use of alternative payment methodologies other than Medicare methodologies, must be justified in the contract file by demonstrating that the estimated total charges would result in lower charges than those anticipated under the Medicare methodologies. (See Section 8 which addresses the procedures to use when the prices are greater than Medicare Rates.)

H. Exception Process for Pricing Exceeding That of the IHS Medicare Rate Ceiling. Prior to purchasing health care services at rates higher than prevailing Medicare allowable rates, the following exception procedures shall be followed:

(1) Contracts and Other Recognized Formal Agreements: Written approval must be obtained, on a "case-by-case" basis, from the Director, MS to award a contract or formal agreement which establishes reimbursement at rates higher than prevailing Medicare allowable rates. For example a provider may offer pricing which exceeds their Medicare rate: a discount off billed charges or percentage above Medicare rates.

Prior to award of the contract or formal agreement, the Area/Associate Director of the respective IHS Area Office shall submit a written request containing a program narrative to the Director. IHS. The program narrative shall contain the circumstances requiring award to the specific provider and a comparison of the rates offered to the Medicare rate, by using data obtained from the FI. Award of these contracts should normally be restricted to those situations where the provider is the only acceptable provider in the geographic area, and it will be absolutely necessary to use their services on a recurring basis.

(2) Open Market CHS Purchase Orders: Approval must be obtained, on a "case-by-case" basis, from the IHS Service Unit Director authorizing the use of a non-contract provider. An IHS physician, designated by the IHS Service Unit Director, must document and recommend that services from the particular non-contract provider are justified under the circumstances. The IHS physician's recommendation must identify the cost of the services.

I. Type/Source of Funding. The source of funding to be used is determined by the nature of the contract.

(5-5.13 (I) Continued)

(1) CHS funds may be used to pay for health services provided in non-IHS public or private medical facilities or by providers other than those of the IHS or those funded by the IHS.

(2) If Hospitals and Clinics (H&C) funds are not available, CHS funds may also be used to support direct care services (e.g., specialty clinics, locum-tenens, outside radiology, and laboratory services).

(3) If H&C funds or third party resources (e.g., Medicare/Medicaid funds) are not available, CHS funds may be considered as an optional source of funding to purchase non-physician health care services that are required to maintain direct care services (e.g., nurse anesthetists).

(4) The current CHS funding is two-year funding. Funds appropriated by the Congress in the one fiscal year do not have to be obligated until the end of the next fiscal ytXr.

(5) H&C funds are used to pay for direct services in an IHS facility. H&C funds are one-year funds and can be used to pay for contract health services.

(6) The IHS has other sources of funds to pay for medical services (Medicare/Medicaid reimbursements and other program funds -- e.g., alcohol program).

J. Twes of Health Care Services Supplies. The following list provides examples of the categories of health care services and supplies that can be purchased from the private sector.

(1) Acute care hospital services:

a. Inpatient;
b. Outpatient;
c. Emergency room;
d. Professional Services (facility based professional providers, e.g., Emergency Room physician).

(2) Free-standing outpatient facility services (e.g., urgent care center, ambulatory surgical center).

(3) Professional health care provider services:

(5-5.13 (J) Continued)

a. IHS Facility (on-site):
   (0 Locum tenens (full or part time);
   (ii) On Call services;
   (iii) Specialty Clinic services (e.g., podiatrist, rheumatologist);
   (iv) CIerkship/Residency/Fellowship rotations (benefit of Government);

b. Non-IHS Facility (off-site):
   (0 Physician services;
      (a) Inpatient;
      (b) Outpatient (free standing facility);
      (c) Private Office.
   (ii) Dental professional services.
   (iii) Non-physician/non-dental professional services (e.g., podiatry, physical therapy, optometry) -
      (a) Outpatient (free standing facility);
      (b) Private Office.

(4) Patient Transportation:

a. Emergency Medical Transportation (Ambulance):
   (0 Air;
   (ii) Ground.

b. Non-Emergent:
   (0 Common Carrier;
   (ii) Private Carrier.

(6) Reference Medical Laboratory Services

(7) Extended Care Facility:

a. Stilled Nursing Facility (Medicare Approved);
b. Psychiatric Inpatient Facility;
c. Physical Rehabilitation Facility;
d. Alcohol & Drug Rehabilitation.

(8) Consumable Medical & Surgical Supplies:

a. Prosthetics and Appliances;

(5-5.13 (J) Continued)

b. Dental Laboratory Services;
Pharmaceuticals;
: : Eye Glasses;
e. Hearing Aids.

(9) Durable Medical Equipment.

K. Sub-obiect Class Codes Processed and Paid bv the IHS FI. Refer to Manual Exhibit 5.5-13-A for a listing of those sub-object class codes paid by the IHS FI Sub-object class codes not listed in the exhibit are normally paid by the respective Area Finance Office.

L. Pricing Methodologies. There are several methods for establishing price schedules for the anticipated contract or purchase order. Examples of reimbursement methodologies are listed below, on which pricing may be based for facility and provider formal agreements.

(1) Facility Charges;

a. Medicare Methodology;
b. Percentage of Medicare Methodology;
c. Per Diem;
d. Percentage of Billed Charges.

(2) Providers:

a. Medicare methodology;
b. Percentage of Medicare Methodology;
c. Per Diem;
d. Percentage of Billed Charges;
e. Clinic Fee/Per Day/Per Clinic.

M. Responsibilitv Factors/Minimum Accentable Qualifications of Non-IHS Health Care Providers. The IHS is responsible for ensuring that the health care services to be purchased, either under contract, recognized formal agreement, or open market, will be provided by a non-IHS health care provider who meets the following minimum acceptable qualifications.

(1) Acute Care Hospital:

15-5, I3 (M) Continued)

Fully state cer: ,ied/licensed to deliver services within the state.

i: HCFA Certification.

O R

c. Accreditation/certification by another organization granted "deemed status" by HCFA for this purpose, e.g., JCAHO (Joint Commission on Accreditation of Healthcare Organizations). AOA (American Osteopathic Association).

(i) It is understood that many small rural facilities may not be accredited due to size or funding limitations. In those cases, HCFA certification of the facility is acceptable substitute.

(ii) In rare instances a hospital is neither accredited or HCFA certified. Generally those facilities are used for urgent or emergent care only. Valid state certification is required, and the quality of care provided by those facilities must be assessed and monitored by IHS personnel.

d. Medical liability insurance.

(2) Professional Providers:

a. Graduation from an accredited professional school;
b. Certification and state licensure;
Required specialty training;
z. Required clinica! practice Experience.;
e. Hospital affllliation or ability to obtain;
f. Medical liability insurance.

N. Malpractice.

(1) Services provided by physicians and other providers in Federal Government operated facility: under contracts are not generally covered by the Tort Claims Act. Only Government employees are covered by the Act. Therefore, when services must be obtained on an individual contract or purchase order, it must be realized that the individuals providing such services are responsible for providing their own malpractice insurance

(2) When physic' hospital, or other provider services must be obtained by contract rather than be temporary Government appointment, the provider shall maintain

/5-5.13 (N) Continued)

medical malpractice insurance in an amount consistent with local practice and the contract (purchase order) provisions throughout the entire period of performance.

(3) Contract/Purchase Order Provisions.

a. The contract shall include FAR clause 52.237-I, Indemnification and Medical Liability Insurance. This FAR clause requires that contractors maintain their own malpractice insurance in amounts consistent with local practice. (The dollar value(s) of standard coverage(s) prevailing within the local community as the specific medical specialty, or specialties concerned, or such higher amounts as deemed necessary to protect the Government's interest, is inserted.)

b. The contract must contain a statement that the contractor shall promptly notify the IHS Project Officer in the event of a malpractice suit or action involving an IHS patient. Further, the provider/facility shall authorize IHS representatives to collaborate with counsel for the insurance carrier in settling or defending such claims when the amount of the liability claimed exceeds the amount of the coverage.

(4) It is the responsibility of the PO to determine the amount of malpractice insurance necessary for each contract, whether for CHS or on-site personnel (per occurrence).

0. Tvpes of Instruments to Purchase Health Care Services.

(1) Contracts.

a. Indefinite Delivery Contracts.

(0 Frequently the IHS's acquisition needs cannot be fully defined at the time of contract award, Uncerntainties in quantity and price and the exigencies of time dictate entering into contracts with certain specifics completed during the contract period. The IHS is unable to define how much of a service or item it requires at specific times when entering into the contract. Indefinite delivery contracts have no set quantity and/or no set delivery schedule. There are three types of indefinite delivery contracts: (1) definite quantity-indefinite delivery, (2) requirements, and (3) indefinite quantity contracts.

(5-5.13 (0) Continued)

(a) Definite quantity -- indefinite delivery contracts are where the Government agrees to buy, and the contractor agrees to sell, a set amount of a service or item for a fixed period with deliveries to be scheduled upon order (FAR 16.502).

0.0 Reouirements contracts provide the Government activity with the specific supplies or services they need during the contract periods (FAR 16.503). Requirements contracts are ed for anticipated recurring requirements, where the precise quantities needed during the contract period cannot be predetermined.

W Indefinite auantitv (guaranteed minimum) contracts provide for an indefinite quantity, with stated limits of specific supplies or services to be furnished during the contract period (FAR 16.504).

(ii) When indefinite delivery solicitations are to be used to obtain necessary services the CO should consult with appropriate program/project personnel to determine if multiple awards are practicable. All solicitations, however, must specify that delivery orders for patient treatment will be made on the basis of medical, geographical, and other program and price considerations as determined at the time the order is placed.

(iii) Requirements contracts for the acquisition of CHS normally result in multiple awards. Whenever multiple awards are made, they must be closely monitored to ensure that orders placed against such contracrs conform to good contracting practices with proper consideration giber1 to differences in provider costs, in addition to concerns such as geogt hit locations, available hours, continuity of service, etc.

(iv) Where two or more Area/Program Offices use a single provider for hospital services, annual use estimates shall be furnished by all users to the Program Offke in whose Area the hospital is located and a single contract shall be awarded for all IHS needs Each Area Office submitting an estimate shall be provided the contract number and any EIN numbers which apply to the contract. Area COs shall distribute this information to all appropriate Service Units.

(5-S. 13 (0) Continued)

(v) Multiple awards should not be made to a single provider for a variety of services (i.e., a contract with a hospital should provide for all services contemplated from that hospital inpatient, outpatient, etc., rather than a separate contract for each service).

(2) Purchase-Deliver-y Order and Related Forms. Purchase-Delivery Order forms are multipurpose forms designed for the following uses: (1) negotiated open market purchases of supplies or services not in excess of the small purchase limitation, and (2) a delivery order for ordering or scheduling deliveries against established contracts. Ordering officials shall ensure that delivery and purchase orders clearly state the services ordered and provide a best estimate of the charges anticipated. Examples of these forms and their uses are described below:

a. PHS-347 Order for Supplies or Services.

This is the appropriate instrument for acquiring non-patient specific services and supplies, i.e., services: on-site specialty clinics, hiring of individuals to perform direct health care services in government facilities; supplies: infant car seats, bicycle helmets, diabetic test kits.

The PHS-347 form is normally issued and signed by acquisition personnel or by individuals who have been delegated the authority to use this form by the Contracting Officer.

b. CHS Purchase-Delivery Order for Health Services. Form IHS-T-843-1A.

Note: Other CHS Purchase-Delivery Order forms purchase Order for Contract Health Services Other Than Hospital Inpatient or Dental, IHS-644A; and Purchase/Delivery Order For and Report of Contract Dental Care IHS-5701A) are in the process of being phased out and will eventually be replaced with the IHS-T-843-1A.

The CHS-Purchase-Delivery Order is the instrument to be used to provide a timely and efficient method of obligating government funds, ordering, and authorizing the provider to render health care services. CHS delivery orders and purchase orders are to be issued before services are provided, except in emergency situations wherein notification of services provided occurs within 72 hours, or within 30 days for the elderly and disabled. This satisfies the contracting principle that an order is an offer by the government to a provider

15-5.13 (0) Continued)

to buy certain services, and that a contract is formed when the provider accepts the offer.

It is the policy of IHS to use the forms listed above as follows:

(0 CHS Delivery Orders.

(a) When issued against an existing contract, the form is referred to as a Delivery Order. The contract's terms, conditions, and clauses apply rather than those cited on the reverse of the provider's copy of the form. This is the preferred use of this form and application should be maximized. Separate delivery orders should be issued for each individual patient, except as provided for in this IHS guidance concerning blanket and multiple orders.

(b) Each delivery order issued against a contract must cite both the contract number and the delivery order number in the appropriate blocks on the form. When used as a delivery order under a contract, there is no dollar limitation on each order or modification to each order, except as established by the total estimated amount of the contract or as otherwise restricted by the CO in his/her delegation of authority.

(c) Bach order placed under a provider agreement or BPA must cite the provider agreement number as well as the delivery order number in the appropriate blocks on the form. All delivery orders issued against provider agreements shall be issued to the lowest cost provider for the required services, to the extent such an approach is considered to be within program requirements, patient needs, geographical considerations, etc. Orders issued under provider agreements shall not exceed the small purchase limitation per order.

(ii) CHS Purchase Orders.

(a) When nor issued against an existing award instrument this is considered an open market purchase ,and the form is referred to as a Purchase Order. The conditions and clauses cited on the

IS-5.13 (0) Continued)

reverse of the provider's copy of the form apply. Separate purchase orders should be issued for each individual patient, except as provided for in this IHS guidance concerning blanket and multiple orders.

(b) The dollar limitation on the total value of each open market order including modifications (supplements) shall not exceed the small purchase limitation.

(a The ordering official signing the open market order cannot exceed their signature authority delegated by the Area CO. In situations where there is no official at the ordering location with an appropriate delegation, the purchase order and all modifications/supplements must be forwarded to the Area Contracting Office for signature.

G-0 When an open market order requires a modification/supplement that increases the total order amount above the delegated authority of the ordering official, the modification/supplement to the order must be signed by an official whose delegated authority exceeds the total of the purchase order and all modifications/supplements.

(iii) The CHS Purchase-Delivery Order (PDO) is not the authorized award instrument for purchasing the following.

(a) Obtaining residence/fellowship programs. These programs shall be acquired through Cooperative Agreements issued by the Contracting Office and shall be approved no lower than by the Area Director.

(b) Specialty health care services to be performed on-site in Government facilities (e.g., radiology services, podiatry clinics). If the service is considered a repetitive need and the annual amount exceeds the small purchase limitation, these services must be obtained through a contract. If the amount is less than the small purchase limitation, a PHS-347 Order for Supplies or Services form is the proper instrument. Competition is ensured

(5-5.13 (0) Continued)

and both instruments are normally issued by acquisition personnel.

(c) Hiring of individuals to perform direct health care services in a Government facility. This category includes health services for which the Government is unable and/or it has been determined impracticable to recruit. This also occurs where the patient load does not warrant the assignment of full-time personnel and/or there are needs for short-term replacements to cover leave, training, illnesses, or meeting attendance away from duty station. If the service is considered a repetitive need and the annual amount exceeds $25,000, these services must be obtained through a contract. If the amount is less than $25,000, a PHS-347 Order for Supplies or Services form is the proper instrument. The instruments are the appropriate way to obtain these services and ensures competition. Both instruments are normally issued by acquisition personnel.

(4 Miscellaneous health services, supplies, and services required to support health services (not incidental to treatment of a specific patient). Example: Purchasing diabetic test kits in bulk for stock. These services and/or supplies should normally be purchased by use of the PHS-347 or contract.

(3) Memorandums of Agreement. Memorandums of Agreement (MOAs) and any other instrument except those provided for in the Grants and Cooperative Agreement Act are specifica!ly prohibited for any use in connection with obtaining health services or related requirements under this guidance.

P. Publicizing Acquisitions Actions.

(1) COs shall publish a synopsis in the CBD for each category and type of service expected to exceed the small purchase limitation requirement.

a. The synopsis shall advise of the specific Government needs and intent to contract for health care services, to include the geographical location of the services, estimated number of patients, types of services involved, notice of possible multiple awards if applicable, estimated period of performance, and options if applicable.

15-S. 13 (PI Continued)

b. Synopses issued by IHS must notify prospective offerors of the IHS policy regarding the use of Medicare allowable rates for hospitalization or individual provider services.

c. IHS synopses, made on an annual basis, may also notify prospective offerors that awards may be made on an open continuous basis as long as Medicare methodologies are used for award pricing. In addition, provider services to be obtained under blanket provider agreements shall use an annual requirement synopsis to solicit additional sources.

(2) All providers of the types of services required, located in the geographical area where services are to be obtained, shall be forwarded a copy of the solicitation. Copies of the solicitation will also be provided to any other requestors who are responding to the synopsis in accordance with FAR 5.102.

(3) Where acceptable, responses are expected to be minimal. COs are encouraged to supplement each synopsis by publishing requirements in newspapers, medical periodicals and/or journals, and contacting local professional associations and Governmental health agencies to obtain increased responses.

(4) All contract awards shall by synopsized in accordance with FAR Part 5.

Q. Non-Competitive Solicitations.

(1) Although many factors such as medical necessity, emergency medical care, lack of medical resources, isolated and culturally unique patient populations, and a variety of Federal, State and local standards may affect the availability of health services -- competitive solicitation and award processes shall be used to the maximum extent possible.

(2) Noncompetitive acquisitions should generally be limited to only those situations where services required by a particular patient can only be rendered satisfactorily by a particular provider uniquely qualified by education, training, experience, licensure (where applicable), and/or charter in a particular field of endeavor.

R. Types of Formal Agreements (Excluding Contracts).

(1) Budget Orders.

(5-5.13 (R) Continued)

a. Blanket Orders, which merely obligate funds for a specific timeframe are prohibited.

b. Blanket Delivery Orders may be issued against indefinite delivery contracts which specifically authorize providers to treat a specific category of patients who present themselves to a facility or provider. Blanket Delivery Orders must set~maxirnum dollar or patient limits, cannot exceed 30 days per order, and must require the provider to submit the appropriate information for each patient treated.

c. A Blanket Purchase Order (PHS 347) may be issued to a provider to cover all patients treated during a single clinic when the CO is unable to negotiate a fixed price per clinic under a formal agreement. In such cases the provider must submit the appropriate information and report separately for each patient treated. COs shall review historical purchase data with their program personnel to determine repetitive use of open market purchase orders and every attempt should be made to award formal agreements for such services as appropriate.

(2) Provider Purchase Agreements.

a. Area contracting offices should solicit provider agreements from all potential providers in an Area whose estimated annual usage is known, and in which the provider will be offering a broad array of services on an "as needed" basis.

b. An annual CBD notice should be used to increase the number of potential providers and every effort must be made to identify and offer agreements to all responsible providers to ensure the requirements of FAR 13.204(d) are met.

c. When several potential providers are available and some have traditionally provided services in excess of $25,000 per year and some under $25,000, a standard competitive solicitation should be issued. The solicitation should notify offerors that, based on the evaluation of proposals, a provider agreement will be issued in lieu of a contract award whenever potentiai usage is estimated to be $25,000 or less.

IS-5.13 (R) Continued)

d. Provider agreements may be continued for up to five (5) years when the review requirements of FAR 13.205 are complied with. However, annual attempts must be made to provide for additional agreements with new providers.

(3) Rate Quotation Methodology. This alternate acquisition methodology is currently being tested at three IHS Areas. Determination will be made, upon completion of the pilot, whether this methodology will be implemented throughout the II-IS.

(4) Blanket Purchase Agreements.

a. A blanket purchase agreement, though not a contract, is a written understanding negotiated by the parties containing specifics on all possible terms and clauses that apply to future orders between the parties during the contracting (ordering) period. It also contains, as specific as practicable, a description of supplies or services needed and methods for pricing, issuing, and delivery of future orders.

b. Since a BPA is not a contract, there is not a promise that the IHS will place any order, so the "contractor" may withdraw from the agreement, up to the time an order is placed.

c. Unlike requirements and indefinite quantity contracts, competition must be obtained before issuing each order under a BPA. (If the Government, however, determines competition is impracticable, i.e., only one source is available, further competition may be dispensed with if adequate justifications are obtained.)

d. Repetitive services (other than hospital services) and supplies shall be obtained under Provider/Blanket Purchase Agreements (BPAs) hereafter referred to as provider agreements. The issuance of a BPA with a dollar limit in excess of the small purchase limitation is not in violation of the FAR, however, no individual order shall exceed the small purchase limitation under FAR 13.204(b). Each BPA must state a Not To Exceed amount that is consistent with the usage of the BPA.

e. When review procedures are used in accordance with FAR 13.205 these agreements may be issued for periods of performance up to five (5) years.

(5-5. 13 (R) Continued)

f. No accounting or appropriation data needs to be contained in the agreement itself, however, contracting activities will ensure that funding is available prior to placement of orders. This may be accomplished by either of the following ,methods:

(0 BPAs for prescriptions or provider services which use individual prescriptions as orders or oral ordering procedures should use "bulk funding" as defined in FAR 13.101. Annual or quarterly bulk funding should be provided on a Purchase/Service/Stock Requisition Form 393.

(ii) Blanket/Provider agreements using written orders will include funding on each order identical to the methods used for indefinite-delivery type contracts.

g. Repetitive physician provider services shall be obtained under provider agreements. Provider agreements must be bilateral and must be issued by centralized contracting staff (IHS Area Offices only) in accordance with the following:

0) Provider requirements must be synopsized in an annual CBD announcement.

(ii) IHS provider agreements must reflect provider acceptance of reimbursement at rates which do not exceed Medicare allowable rates (see Sections 3 and 4).

(iii) Provider Agreements should be issued to all providers in a geographical area who request an agreement and indicate an acceptance of reimbursement at or below Medicare methodologies.

(iv) Delivery orders must be issued on IHS form T-843-1A as appropriate, while adhering to the requirements of FAR 13.204.

Telephone orders may be used but must include the order number and be confirmed by written deliver order within 72 hours.

69 All appropriate provisions of this guidance are applicable to provider agreements as well as contracts. Outpatient prescription services are best covered through use of BPAs with pharmacies located in close

(5-5.13 (R) Continued)

proximity to patients. Prescriptions issued for eligible patients may be used as orders against these BPAs.

S. Use of Sealed Bidding Procedures (FAR Part 14 and HHSAR Part 314).

(1) Sealed bidding procedures are normally not appropriate for the competitive solicitation of most medical services, and competitive negotiation procedures should be used to obtain the necessary health care services.

(2) Miscellaneous health services, defined in paragraph C below, and supplies and services required to support health services have often been successfully acquired using sealed bidding procedures to obtain price competition from responsible sources. In such circumstances use of this methodology is preferred and should be used whenever feasible and practicable (see FAR 6.401).

(3) Miscellaneous health services, supplies and services required to support health care are generally defined as diagnostic aids, ancillary health services, and supplies not incidental to treatment of a specific patient. They may include, but are not limited to the following: laboratory services; eye examinations; the manufacture and fitting of eyeglasses and dentures; some ambulance services; etc.

(4) If sealed bidding is used, the CO must document the contract file, stating why this method of acquisition is suitable for the requirement.

T. Procedures for Contracting by Negotiation.

(1) The nature of the majority of health care services acquired by the IHS often require discussions with responding offerors (e.g., hospitals, physicians) concerning fee schedules, times and days of services, and other factors. In addition, isolated geographical locations for required services often make it difficult to receive more than one offer. Often the lack of bidding experience causes a high percentage of bidders to be non-responsive. Competitive negotiation procedures should be used to obtain necessary health care services.

(2) The IHS has determined that there are two levels of competitive negotiated procedures that may be used for the solicitation of proposals for the acquisition of medical services. It is the responsibility of the Program Office, with the guidance and concurrence of the CO, to determine the level of competition applicable to a

(5-5.13 (T) C 'nued)

given requirement. This information should be incorporated into the Request. for Contract (RFC) package. They are as follows:

The first is the traditional formal technical evaluation which is used when quality and sTechnical aspects are of critical importance. Generally, this method is used when one award is to be made.

b. The second method is when proposals are solicited on the basis of special standards of responsibility.

(3) Where the competitive negotiation processes are applied, requests for proposals may use varying technical and price combinations depending on circumstances as follows:

a. When technical excellence is the major concern, substantive evaluation criteria, over the basic responsibility factors, must be developed.

b. In such situations offerors will be evaluated primarily on technical factors rather than costs. Only one award is normally made to the highest technical offeror, unless projected patient load is estimated to exceed provider capacity or there are geographic limitations.

(4) All IHS solicitations for CHS must notify potential offerors that Medicare allowable rates are the preferred method of determining eligibility for award. Offerors who propose rates which are determined to exceed Medicare allowable rates will not be eligible for award except as noted in Section 4.

U. Evaluation Factors.

(1) It is the responsibility of the Program Office, with the guidance and concurrence of the CO, to develop evaluation factors applicable to each acquisition. (See FAR, Part 9 .

(2) Hospital Educuation Factors:

a. Factors to consider when drafting evaluation factors (the PO should have a good idea of the potential contract facilities that are are liable to service the Population

(S-5.13 (U) Continued)

(i) Is the hospital a Medicare Participating Facility? lf so, all Medicare numbers, including those of sub-providers and distinct part units, should be requested .

(ii) Does the hospital accept Medicaid patients? If so, list all Medicaid numbers, including those of sub-providers. Distinct part units should be requested .

(iii) Is the hospital fully accredited (AOA)? [If not fully accredited, describe its status

(iv) If the hospital is not JCAHO accredited, why? [Ask for a brief description of their programs and policies on Provider Credentialing, Quality Assurance Programs, and Discharge Planning.]

(V) Is the hospital fully certified by the State to deliver hospital services within the State? (If not fully certified, describe its status.)

(vi) Does the hospital have current Medical Malpractice Insurance? Is it self insured? (Ask the amounts, policy expiration date, and medical malpractice insurance carrier .)

(vii) Proximity to beneficiaries,

(viii) Past performance in agency/Federal contracts.

(xi) Facilities and equipment.

(x) Experience with beneficiary population.

(xi) Is a team response required, e.g., air evacuation, trauma team, transplant team.

b. Sample Evaluation Factors:

(i) State licensed or accredited.

(ii) HCFA certified.

f5-5.13 (U) Continued1

(iii) JCAHO or AOA certified.

(iv) Medical liability insurance.

09 Past performance.

(vi) Geographic location.

(vii) Adequacy of personnel/staffing.

(3) Providers.

a. Factors to consider when drafting evaluation factors for providers. As reminder, the requirements for bringing a provider to an IHS facility are somewhat' different than contracting for CHS referral services:

(0 Location of the service required. Will the service be delivered in an IHS facility (e.g., emergency room physicians, nurses) or will patients be referred to a CHS provider?

(ii) Type of medical specialty needed.

(iii) Is the provider a Medicare participating practitioner?

(iv) Does the provider have Medicare New Physician" status (number of years health care practitioner has furnished professional services for payment under Medicare Part B)?

(v) Does the provider agree to accept Medicaid patients?

(vi) What admitting/staff privileges are required? Does the provider have them?

(vii) What type of professional certification is required?

(viii) What are the educational requirements (e.g., for the specialty)?

(ix) Which state does the provider need to be licensed in to provide the necessary services?

(5-5.13 (U) Continued)

(χ) Which specialty(s) is the provider Board certified in?

(xi) Is medical malpractice insurance required, and in what amount?

(xii) Is a Drug Enforcement Agency (DEA) license required?

(xiii) If a contract will be awarded to provide the direct delivery of health care services in an IHS facility, is credentialing needed for that occupation? At what point in the contracting process does the credentialing need to happen?

(xiv) Proximity to beneficiaries.

(xv) Past performance in agency/Federal contracts.

(xvi) Office, facilities, and equipment. What does the provider need to have on-site?

(xvii) Experience with beneficiary population.

(xviii) Is a team response required, e.g., Air evacuation, trauma team, transplant team.

b. Sample Evaluation Factors:

(0 Professional Education. Graduate of a professional school accredited by a nationally-recognized body, appropriate for the member's professional discipline.

(ii) Post-Graduate Training. Offerors must provide evidence of additional specific or program-pertinent training.

(iii) Required specialty training. Offerors must provide evidence of additional specific or program pertinent training in appropriate specialty.

(iv) Required clinical practical experience. Quality and quantity of offeror's past and current clinical experience in this specialty, in addition to required responsibility factors.

(S-S.13 (U) Continued)

(v) Hospital affiliation or ability to obtain.

(vi) Professional certification and licensure.

(vii) Professional affiliations.

(viii) Suitability:

Professional liability claims and judgments made against the provider.
Previous denial or revocation of medical staff membership at another facility.
Previous reduction, suspension, revocation, voluntary relinquishment, or non-renewal of privileges at another facility.
Problems with alcohol or drug abuse.
Previous loss, suspension, restriction, denial, or voluntary relinquishment of professional licensure or professional society membership.
Health status.
Revocation or suspension as a Medicare or Medicaid provider.
Professional liability cancellation within the past five (5) years.
DEA licensing investigations or actions.
More than five (5) percent owners of any medical facility, joint ownership or medical service, or equipment with a facility to which patients may be referred.

(ix) Experience with patients to be served. Offeror's past and current professional experience dealing with American Indians and Alaska Natives and /or experience in providing services on a reservation or in remote locations.

(x) Proximity to patients. Distance and travel time (either for the patient to travel for treatment or for the physician to arrive on-site at an IHS facility).

(4) The solicitation must specify whether paramount consideration will be given to technical proposals, cost, or price.

(5) Generic Evaluation Factors For Negotiated Procurements.

(5-5.13 (U) Continued)

a. Technical Proposal:

(0 Technical Approach -

(a) Understanding of problem.
(b) Unique problem solving approaches (e.g., innovation, creativity).
w . Response to sample questions.
(d). Special resources and tools.

(ii) Management Approach -

(a) Appropriateness of organizational structure and stafftng mix.
(b) Management control, reporting, and cost control/schedule systems.
(cl Subcontract management plan.

(iii) Corporate Experience --

(a) Quality of reference checks, especially with respect to work of a similar or related matter.
0) Experience in projects of comparable scope and complexity.
Cc). Experience in high quality, demanding projects.
td) Experience in similar operational and technical environments.

(iv) Personnel -

(a) Key technical, specialized personnel, and staffing plan.
(b) Comparable past experience.
(c) Academic credentials and special training.
(d) Quality of reference checks.
63 Access to specialized talent elsewhere in company or within multi-contractor organization.
(f) Use of technical advisors/consultants/experts.

(5-5.13 Continued)

V. Social Standards of Responsibility - FAR 9.104-2 (Responsibility Factors).

(1) When acquiring health care services, special standards of responsibility may be used. Solicitation(s) may be issued using only those special standards of responsibility (responsibility factors) necessary for award. When the application of formal evaluation criteria by a technical evaluation panel will have little effect on the quality of services, but the solicitation must be flexible enough to negotiate rates, dates, hours of performance, and other items, it is appropriate to use responsibility factors. Generally you are concerned with personnel, financial responsibility, and the facility.

(2) Responsibility factors work by acceptance or rejection of an offeror based on the ability to meet the special non-negotiable standards (go/no-go). Failure to meet the special standard(s) automatically disqualifies the offeror from receiving an award.

(3) It is the responsibility of the Program Office, with the guidance and concurrence of the CO, to determine the special standards of responsibility applicable to the each acquisition. The suggested strategy is to always be aware of type of facility or type of discipline needed.

(4) Multiple awards.

a. Multiple awards are encouraged when using the special standards of responsibility. This is in order to establish formal contractual relationships with as many providers as possible in a geographic area where mere is a potential for referral.

b. When the provider meets the special standards of responsibility, acceptance of Medicare Methodologies, or price, as applicable, then becomes the paramount factor in determining awards, and such awards should be considered for all providers in a geographical area with whom there is a potential for referral.

c. Orders placed against such contracts conform to good contracting practices with proper consideration given to differences in provider costs, in addition to concerns .such as quality, geographic locations, available hours, continuity of service, etc.

(5). Single Competitive Award.

(5-5.13 (V) Continued)

If the intent is to award only one contract, then Section M of the solicitation must clearly state that if all offerors meet the special standards of responsibility, then award will be made on the basis of lowest overall price.

W. Technical Evaluation.

(1) Competitive requests for proposals may be solicited on the basis of either (1) basic responsibility criteria or (2) a formal technical evaluation where quality and technical aspects are of critical importance. The decision as to which technical level of competition is applicable to a given requirement is necessarily the responsibility of the program/project office. However, the advice of the CO should be sought and provided to ensure a well conducted and appropriate decision.

(2) Technical Evaluation for Solicitation with Social Standards of Responsibility.

a. Those offerors who meet all responsibility criteria need only be identified by the program office, in writing, as acceptable.

b. When an offeror fails to meet the special standard of responsibility, the PO must provide a written explanation of which factor or factors the offeror fails to meet. A procedure akin to a preaward survey may be instituted to verify the qualifications of the offerors.

(3) Formal Technical Evaluation.

a. In recognizing that technical evaluations of competing health professionals involve the exercise of medical discretion and judgement, we note that it is a somewhat subjective process.

b. When a single award (or multiple awards) will be made to the best technically qualified facility or provider, formal technical evaluation criteria must be developed and incorporated in the RFP and applied in the technical evaluation.

c. The solicitation should make it clear to all offerors that the selection will entail the exercise of discretion and judgement by the technical evaluation panel in using the evaluation factors listed, to measure and assess the merits of the proposals received.

(S-S.13 0 Continued)

d. The technical evaluation panel shall include medical specialist's proficient in the subject matter of the solicitation. The PO may choose to be a voting member of the technical evaluation panel.

e. A technical evaluation report must then be prepared and furnished to the CO by the chairperson of the technical evaluation panel and maintained as a permanent record in the contract file. This report shall reflect the ranking of the offerors and contain a narrative to document the evaluation and assessments which resulted in such rankings (see HHSAR 315.608).

f. It is required that the solicitations for such services list the evaluation factors that will be considered in the order of their importance.

g. In addition, the relative importance of price to technicaI requirements must be clearly stated in accordance with HHSAR 3 15.406-5(c)(4)(iii).

(4) Offeror's proposal preparation instructions to be included in the RFP are required when the intent is to make award on the basis of formal Technical Evaluation Criteria.

a. General Instructions - are to be included in the RFP and may be found in HHSAR 315.406-5(b)(l)(i),

b. Technical Proposal Instructions - detailed guidance concerning the contents of the technical proposal instructions is not presented here. Examples of general statements may be found in the HHSAR 3 15.406-5(b)(2).

c. Business Proposal Instructions - examples of suggested instructional language for the business proposals may be found in HHSAR 315.406-3.

X. Reasonableness of Price.

(1) Contracts Awarded Using Medicare Payment Methodologies.

a. Facilities (in-and out-natient there are two or more hospitals within close proximity or reasonable geographic distance to each other, the service unit is obliged to choose the lower priced facility provided, if it is equal in other ways (e.g, quality; services). Another consideration is where the IHS physicians have hospital privileges, if applicable.

(5-5.13 (X) Continued)

b. Professional Providers. Providers are considered equal if they are at Medicare reimbursement rate or another pricing methodology that is equal to Medicare.

c. Others (e.g.. ambulance).

d. A fair and reasonable price is one which is fair to both parties to the transaction, considering promised quality and delivery, and probability of the seller producing as promised. The price established by the Health Care Financing Administration (HCFA) for services rendered, either by a medical facility or a health care provider, is considered to be a price set by regulation. The processes established by HCFA are sufficient to establish the price. The IHS FI will be obtaining each hospital's Medicare Cost Report information from the HCFA Public Use Files upon receipt of contract information. This information will be used in the payment methodology.

(2) Contracts Awarded Based On Pricing Other than Medicare Payment Methodologies.

a. Certified cost or pricing data is required for all contracts expected to exceed $100,000, except in rare instances (see FAR 15.804-2 and 15.804-3). Contract audits are required for all negotiated contracts which exceed $500,000, except where the information available to the CO is considered adequate to determine the reasonableness of the proposed cost or price (See FAR 15.805-5).

b. Offerors or contractors for solicitations anticipated to exceed $100,000 must submit certified cost and pricing data. In addition, COs must require prospective contractors to perform a price analysis and/or cost analyses if required by FAR 15.805.1. The CO is responsible for comparing the stated estimated cost against the actual cost of any previous year's contract. If the solicitation is for services not previously provided under contract. the contracting officer shall perform and document a market survey to substantiate the stated anticipated dollar threshold provided by the requesting office.

c. Certified cost data, pricing data, and contract audits are used by COs to develop negotiation strategies and to determine the lowest and best price. The CO is required to document why a contract audit was not obtained, and if an audit was obtained, any actions taken based on audit recommendations. For non-competitive contracts, allowable costs include items such as salaries,

(5-S. 13 (X) Continued)

fringe benefits, medical journals, professional dues, malpractice insurance, and other direct costs.

(3) Contracts for Providers Located On-Site in IHS Facilities.

a. For provider contracts, all contract files must contain cost comparison data to justify the salaries of full time employees reflected in the proposed contract. Comparison sources should include historical data, local hospitals, medical school affiliates (if any), and published data sources like the Association of American Medical Colleges.

b. The contract price must be negotiated on the actual salary of those individuals providing the services. If the salaries of the individuals to provide the services are not known before the contract is awarded, the median salary shall be used.

Y. Geographic Coverage. The project officer shall provide the contracting staff with the location of where services are to be provided and/or the population to be served. If more than one Area is using the contract, the appropriate Area to issue the contract is the Area where the facility is located.

2. Use of Options.

(1) Inclusion of option years in contracts for health care services is strongly encouraged. The CO has the authority to award up to four (4) pre-priced l-year options in addition to a base year for the contract in accordance with FAR 17.2.

(2) Each option year shall be pre-priced as a separate line item (or line items) including those using Medicare Methodologies.

AA. Contract Price Adjustments. Contracts may use price adjustments to increase pricing as follows:

(1) Increases in Medicare allowable rates or other rates set by IHS or State edict can be automatically added to the contract whenever the Medicare methodology is amended or an amended IHS or State rate structure is approved, as long as the following statement is incorporated in the contract for IHS or State rates:

/5-5.13 (AA) Continued)

Economic Price Adjustment - Prices Set by Regulation [Use for Medicare, IHS, or State rates set by regulation];

Fee schedules set by HCFA, IHS, or State edict will be automatically adjusted upon receipt of the regulatory changes in such schedules by the CO or by the FI handling payment.

(2) Priced options may be exercised in accordance with FAR 17.1 and HHSAR 317.2.

(3) If the CO is unable to negotiate Medicare allowable rates, IHS, State rates, or priced options, then the Economic Price Adjustment clause of 52.216-4 (in accordance with FAR 16.203(c)) may be used. When used, contractor proposed rate increases should be closely checked to ensure that they are appropriate. Consideration should be given to the following:

a. FAR clause 52.2 16-4, Economic Price Adjustment Labor and Materials, does not specifically address the type of services awarded under this instruction, however, the clause provides adequate latitude for evaluating increases in the costs of medical care. This clause should only be inserted in medical service contracts containing option periods of performance where contractors will not agree to definitively priced options for the option years and the ability to increase prices during the life of the contract is required.

b. When clause 52.216-4 is used, additional guidelines should be established at the time of negotiations and documented in Section H of the contract. These guidelines should consist of a comprehensive description of conditions covering increases for fees. Increases may be tied to national standards (such as the Consumer Price Index, HRSA Medical Reimbursement Rates, and standard industry rates such as Blue Cross/Blue Shield), regional or state economic indicators, or may be negotiated on individual data furnished by the contractor. Review and analysis assistance may be obtained from the cost advisory branch analysts. In any event, the contract must state in Section H which elements of cost (e.g. labor, malpractice insurance) are subject to an economic price adjustment.

c. The following clause should be included in Section H, for rates other than those set by regulation:

Economic Price Adjustment - Rates Not Set by Regulation

(S-5.13 (AA) Cc .inued)

Requests for changes in the fee schedule shall be made in accordance with clause 52.216-4. Acceptable data for negotiation of contractors request for changes consist of, but not.be permitted to, the following:

(0 Changes in the Consumer Price Index of at least _____ %.

(ii) , A cost and pricing proposal meeting the requirements of FAR 15.8 which adequately identifies the changes in costs and their effects on the contractor's existing fee schedule.

d. FAR 16.203-3 provides that the CO must make a determination that the economic price adjustment is necessary either to protect the contractor and the Government against significant fluctuation in labor or material costs or to provide an adjustment in the event of changes in the contractor's published prices.

BB. Pavment Guidance.

(I) The use of Medicare allowable rates for CHS is the preferred method of award and its use should be maximized. Payment for services not covered by Medicare allowable rates shall be determined separately by the FI. Indian beneficiaries should not, under any circumstances, receive any supplemental billings for services rendered.

(2) Payment schedules set by IHS or State, edict may be used as the basis for award and payrnent. Whenever rate methods/schedules set by IHS or State agencies are used, the contract must state "In accordance with the attached schedule of fees issued by (insert governmental agency) dated _____ and subsequent amendments thereto, as authored, approved, and published.' In states where prescribed fee schedules are merely maximum rates (cei..ng) which may be charged, these fee schedules should be used only as a base for negotiation of acceptable rates.

(3) All contracts awarded on a basis other than (A) or (B) above, or a percentage thereof, must specify the payment method or fee/rate schedule to be used by the contractor. Payments to the contractor should relate the services to the definite time element when the period of performance can be adequately measured and controlled such as training conferences and daily clinics. However, payments to the contractor

/5-5.13 (BB) Continued)

on a "fee basis" may be established without relating the services to be performed to a definite time element when necessary, such as patient visits and consultations. COs are cautioned, however, to avoid the use of time and materials or labor hour contracts for health services unless absolutely necessary. Such fee schedules should be completed using prevailing rates in the local areas involved as the test for reasonableness.

(4) IHSaward instruments shall require providers to submit their claims for payment to the designated billing office (IHS FI or Area Finance). These claims must include a completed Medicare Claim Form 1450, 1500, or UB92, as appropriate, and be attached to the form (Purchase-Delivery Form) used to authorize the care.

(3 Providers shall be notified to submit their claims for payment directly to the FI after receipt of the explanation of benefits (EOB) form from alternate resources.

(6) The 30 calendar day prompt payment period will begin when an invoice, supported by evidence that all alternate resources have been billed and payment therefrom has either been obtained or finally denied, is submitted to the FI or the IHS. Accordingly, the invoice shall request payment for only those charges which have not been paid by appropriate alternate resources.

(7) Professional Health Care Services:

When reimbursement is made under the Medicare pricing methodology, the Medicare Physician Fee Schedule (implemented by HCFA on l/1/92) will be applied by the IHS FI to claims for IHS patients as directed by the IHS. In the infrequent event a Medicare fee does not exist for service, IHS, using data provided by the FI, will establish an "IHS allowable amount" in lieu of the Medicare Fee Schedule.

a. HCFA's Common Procedure Coding System (HCPCS);

b. For hospitals that extend a percentage discount from billed charges or from Medicare rates for all categories of services, the IHS FI will apply the percentage discount and calculate the amount of the payment.

03) Inpatient Facility Service's:

(S-S. 13 (BB) Continued)

When reimbursement is made under the Medicare DRG methodology, the entire amount of the payment will be calculated by the IHS FI The "pass-through" portion of the payment will be calculated by dividing the total annual "pass-through" costs in the most recent settled Medicare Cost Report for the Hospital by the annual number of Medicare discharges identified in that report. For hospitals with Fiscal Years ending after 10/l/91, the pass-through will include only non-capital related reasonable costs.

CC. Prompt Payment. NOTE: The payments the FI processes were initially exempt from the Prompt Payment Act. IHS can no longer exempt itself from complying with the Prompt Payment Act and is currently working with the FI to bring IHS into compliance. All other claims for health care services which are processed and paid by the respective Area Finance Office are not exempt from the Prompt Payment Act.

(1) All claims and invoices presented by providers of health care services shall be paid in accordance with the Prompt Payment Act, 31 U.S.C. 3901, et seq., and its implementing policies and procedures contained in OMB Circular No. A-125.

(2) Interest shall be paid on late payments in accordance with the requirements of FAR 32.9. In particular, the specified interest shall be paid when the payment occurs more than 30 days after a proper invoice has been received. Or, in the case of payments made by the FI, when payment occurs more then 30 days after a provider has submitted a "clean" claim.

(3) Cost reimbursement contracts are not subject to payment of interest under the Prompt Payment Act.

DD. Fiscal Intermediary.

(1) Notification upon contract award. Upon contract award, exercise of an option, or other modifications that effect the term or price of the contract, the CO must immediately provide to the FI [the current contractor is Blue Cross/Blue Shield of New Mexico, IHS Contract Health Services, P.O. Box 13509, Albuquerque, NM, 87192-3X)9], the following minimum information:

a. Provider/Contractor Name;

b. EIN or SSN to be used on purchase order (plus suffix if appropriate);

(S-S. 13 (DD) Continued)

c. Contract/modification number;

d. Effective date of the contract/modification;

e. Ending date of the contract/modification;

f. Pricing methodology;

8. Pricing methodology rate(s);

h. Flexible pricing instructions;

i. Any special considerations or comments;

j. Contracting Area Office contact (name, address, phone number);

k. Contracting Officer Signature;

1.* Provider address - billing and physical (for verification only);

m.* Provider phone number and name of contact person;

n.* Level of care authorized for dental services (if appropriate);

0.* Provider type or specialty;

Pm* Medicare Provider Number (multiple);

q** Provider's Medicare Fiscal Intermediary and/or carrier;

r.* Medicare Participating status;

s.* Provider Signature.

*Information obtained by Area from provider.

(5-S. 13 (DD) Continued)

(2) A copy of the provider contract should NOT be routinely sent to the FI.

(3) It is imperative that the FI receive any subsequent modifications to the contract that affect price or contract terms to ensure accurate reimbursement. Correct Payment depends upon the accuracy of this information.

(4) The FI is responsible for initial administrative remedies to resolve payment disputes for claims that it has processed for payment.

(5) The IHS FI will obtain each hospital's or physician's Medicare information from HCFA upon receipt of contract information. This information will be used in the Medicare based payment methodologies.

(6) Area Contracting staff must notify Area Contract Health Service and Service Unit staff of contract criteria so that the correct contract information (contract numbers, EINs, suffixes, etc.) can appear on the purchase delivery orders.

(7) The FI will provide the Area with a Contract Confirmation Letter or Contract Extension Letter upon receipt and successful entry of a contract. Area staff should review the confirmation letter to ensure the contract information was entered correctly.

(W Proper Sub-Object Class Codes used by the FI.

(9) Claims Submission:

a. All claims must be submitted with an IHS Purchase-Delivery Order (PDO) or indicate the PDO number if the PDO is submitted electronically.

b. Claims for inpatient and outpatient facility services must be submitted on a HCFA 1450 claim form using Medicare guidelines and must indicate the full billed charges for the services rendered. This includes claims for payment at Medicare rates or at a per diem rate.

c. Claims for professional services must be submitted on a HCFA 1500 claim form using Medicare guidelines and must indicate the full billed charges for the services rendered.

(S-S. 13 (DD) Continued)

d. If a patient has Alternate Resources, the Provider must submit a copy of the Explanation of Benefits form with the PDO and the claim.

EE. Contract Payment Disputes and Appeals.

(1) When a contract or purchase order provides for administrative processing and payment of provider claims by a FI, the following procedures shall be used to address payment disputes:

a. The FI shall be responsible for administrative remedies to resolve payment disputes that may result from the FI determinations, and to adjudicate payment complaints and disputes from all parties.

b. When FI administrative remedies are not sufficient to resolve the dispute with a provider, the provider/contractor can submit a claim to the awarding Area CO in accordance with the disputes clause of the contract or purchase order.

(2) When a contract or purchase order provides for processing and payment of invoices by the Area, the following procedures shall be used to address payment disputes:

a. The CO, with PO concurrence, shall attempt to resolve payment complaints and disputes between the contractor/provider and the IHS.

b. When the CO is unable to resolve the dispute, the provider/contractor can submit a claim to the CO in accordance with the Disputes Clause of the contract.

(3) The administrative remedy for resolving contract disputes arising under the contract or purchase order is the Contracts Disputes Act and the Disputes Clause. The implementing clause, FAR clause 52.233-l Disputes, shall be incorporated by reference in every contract or purchase order.

FF. Administration.

(1) Section H of the solicitation and the resultant contract(s) shall contain a detailed description of the monitoring procedures used by the IHS to ensure contract compliance. These procedures must be able to demonstrate that the services called for under the contract have been received. After contract award, any incidents of

/S-S. 13 (FF) Continued)

noncompliance as evidenced by monitoring procedures, or other information, shall be forwarded immediately to the CO.

(2) Contract performance monitoring is the responsibility of the PO.

(3) A summary evaluation of contractor performance, based on compliance or noncompliance of contract requirements, shall be forwarded by the PO to the CO prior to exercising any option year.

GG. Expert Witnesses. Contractors may not serve as "expert witnesses" in any suit against the Federal Government. Language to this effect is to be included in the contract.

HH. Language for Medical Contract Instruments.

(1) General. Non IHS health care providers must comply with the following IHS policies/procedures/guidelines.

a. Many of the IHS patients receiving services may only speak a native language and/or reside on a Native American Reservation. The provider is expected to demonstrate sensitivity to cross-cultural and language differences.

b. Non-IHS health care providers shall not bill IHS patients for charges determined to be non-allowable by the IHS FI or the patient's Alternate Resource Payor.

c. Medicare fee schedules will be automatically adjusted by the IHS FI, upon receipt of the regulatory changes from the Health Care Financing Administration. IHS must be notified in writing of any changes in the Hospital's or Provider's Medicare participation status.

d. The IHS is not an entitlement program; therefore, retroactive adjustments to Medicare reimbursement rates cannot be made. To better compensate hospitals for actual costs, reimbursement will be based on information obtained from the most recently settled Medicare Cost Reports. Medicare Cost Report information is obtained form the HCFA Public Use Files by the IHS FI.

e. For claim submission procedures by hospitals and providers to the FI, see Subsection 30 of this section.

(5-5. 13(HH)Continued)

f The II-IS has the right to request and receive medical summaries and or reports on any patient referred to a contract provider for evaluation or care. Failure to receive the requested medical information may result in a delay of payment.

(2) Clauses Required for Hospital Contracts.

CONDITIONS REGARDING THE REIMBURSEMENT OF DRUGS

Under the terms of this contract, Federal funds cannot be used to reimburse hospitals for drug products which have been classified by the Food and Drug Administrations as being "possible effective" or as lacking substantial evidence of "effectiveness" (ineffective). An exception is that Federal funds may be expended to reimburse a hospital when, in the opinion of the attending phyisican, no alternative means of therapy with drug products in the "possible effective" or "effective" Food and Drug Administration classification is available.

5-5 14 URBAN PROJECTS--CONTRACTS

A. General. Urban Health services are provided for the benefit of urban American Indians and Alaska Natives by the IHS through grants, agreements and contracts with urban Indian organizations.

The IHS Urban Health programs and related activities are authorized primarily by the Snyder Act. Title V--Health Services for Urban Indians of the Indian Health Care Improvement Act (IHCIA), Public Law 94437, as amended, specifically targets programs for urban Indians.

Title V includes both general and specific authorization for various contract and project grants that provide urban health care services and activities.

The goals of the IHS urban health programs and related activities, as administered through the Urban Health Programs Branch, include:

(1) to elevate the health status of urban American Indians and Alaska Natives to the highest possible level; and

(2) to assist urban Indian organizations to establish and improve health services designed to meet the needs of the urban Indian community.

Specific objectives include:

a. providing assistance in the development of a comprehensive, effective health services delivery program with emphasis on health promotion and disease prevention; and

b. providing assistance in the development of a comprehensive, effective network of local community resources for delivery of ambulatory health care services. Such a network may be provided through direct and subcontract services, and through formal and informal agreements.

Urban contracts are renewed annually provided that the contractor maintains an acceptable level of performance as determined by periodic IHS performance reviews. More specifically, Section 505 of the IHCIA establishes requirements for renewing urban contract awards under Section 503. The intent of these requirements is that Section 503 renewals will be awarded to incumbent contractors if they meet the provisions of Section 505, including the factors contained under Section 505(d). As a result, Section 503 renewals of contracts which meet these requirements should be

(S-S. 14 (A) Continuedl

awarded to incumbent contractors on a non-competitive basis. Section 506 states other contract and grant requirements.

B. Policythe policy of IHS to: (1) ensure that, within available resources, a comprehensive program of health services or access to health services is developed for each urban Indian community; (2) support community programs to prevent alcoholism and substance abuse; (3) assure that within those resources, eligible patients or clients, regardless of age or sex, have access to and are provided high quality health care service; and, (4) evaluate and monitor program performance of IHS-supported urban Indian programs.

C Program Income for Urban Contracts.

(1) Background. Title V of the IHCIA, as amended, Health Services for Urban Indians authorizes the IHS to enter into contracts with urban Indian organizations for the provision of health care and referral services for urban Indians residing in the urban centers in which such organizations are situated. P.L. 94.437 Section 506(c) allows the Secretary to revise or amend contracts, "notwithstanding any provision of the law to the contrary. " This provision, however, is not intended as authorization for waiver of the Federal Acquisition Regulation (FAR); and Section 506(a) provides that: "Contracts with urban Indian organizations entered into pursuant to this title shall be in accordance with all Federal contracting laws and regulations."

(2) Purpose. The purpose of this subsection is to clarify the definition of ."program income, " the ways in which it may be generated and accounted for, and its use and disposition.

(3) Definitions.

a. "Urban Indian Organization" is a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors.

b. "Program Income" is gross income earned by the contractor from the federally supported activities. It includes, but is not limited to, such income in the form of fees for services performed during the contract period, third-party patient reimbursement for hospital or other medical services such as insurance payments for patients where such reimbursement occurs because of contract supported activity, proceeds

(5-S. 14 (C) Continued)

from the sale of tangible personal or real property, usage or rental fees, etc. Further, interest earned as a result of program income shall be treated as program income.

(4) Utilization of Program Income. Program income earned during the contract period shall be used to further eligible program objectives pursuant to the terms of the contract, regardless of the fiscal year in which the program income was collected. Program income which is earned after the contract period is governed by the terms of the contract. If the award does not address disposition of program income earned after the contract ends, that program income is to be retained by the contractor/Urban Indian Organizarion to further the objectives of the urban program.

(5) Reuortinp;. All contractors are required to report program income on a quarterly basis. Records of the receipt and disposition of all program income must be maintained by the contractor in the same manner as required for the funds provided by the contract.

(6) Contract Clause. All contracts awarded pursuant to Title V shall include the following clause:

Proaram Income

Program Income is defined as gross income earned by the contractor from the federally supported activities (e.g. Third Party Income). All program income earned during the contract period shall be retained by the awardee and shall be added to funds committed to the project by the Indian Health Service to further contract objectives. Program income shall be utilized in a manner consistent with costs allowable under federal regulations. Any other use of the funds is prohibited unless approved in writing by the Contracting Offker prior to the expenditure of the funds.

Program income generated shall be reported to the awarding office on a quarterly basis.

D. References. In future fiscal years, it is anticipated that funding for a proportion of IHS Urban Health Services Programs will be provided to recipients in the form of project grants. A fuller discussion of these Urban Health grant programs will be provided under the forthcoming IHM, Part 5 - Management Services, Chapter 20 -- Grants and Agreements.

/5-5. 14 CD) Continued)

In addition, further policy and procedural guidance concerning the IHS Urban Health Programs, is also provided under the IHM, Part 3--Professional Services, Chapter 19-Urban Indian Health Program.

5-5.15 UNAUTHORIZED COMMITMENTS

A. IHS policy is that only properly authorized acquisition personnel, using correct acquisition procedures, may purchase supplies ,and services for IHS use. When this policy is followed, "unauthorized commitments" will not occur.

This Section explains what an "unauthorized commitment" is; how it can occur; and how to resolve the problem, should it arise, through a process referred to as "ratification. "

B. Description. Specific regulations governing unauthorized commitments are found in the FAR 1.602-3, HHSAR 301.602-3, and PHSAR 304.170.

"Unauthorized commitment," as explained in the FAR, is an agreement that is not binding because the Government official who made it did not have the authority to make the agreement.

Only persons who have been appointed in writing as COs can enter into contracts or commit the Government to pay for products or services. These persons have been given the authority to enter into these agreements on the part of the Government. An unauthorized commitment by *an* IHS employee, (or commitment by a CO beyond the CO's actual authority) is invalid, even if the official appears to have the authority or holds a position of responsibility.

The HHSAR 301.602-3 states that the Government is not bound by agreements or contractual commitments made by persons who do not have the appropriate authorities.

"Ratification," as explained in the FAR, is the act of officially approving an unauthorized commitment. The approvalmay be made only by an official who has been delegated such authority. In the IHS, this authority is delegated to the POW for unauthorized commitments totalling S25,OOO or under, and to the Director, OAM, at IHS Headquarters for unauthorized commitments greater than $25,000.

C. Ratification Procedures. The person who made the unauthorized commitment shall prepare and sign a memorandum to the reviewing CO that provides a complete statement of facts relating to the unauthorized commitment. This memorandum must be approved by the individual's supervisor, program director, and the administrative or executive officer. The memorandum should include:

{S-S. IS K) Continued)'

(1) All relevant documents and records;

(2) why the work was necessary and for the benefit of the Government;

(3) Why the contracting office was not used;

(4) Why the proposed contractor was selected;

(5) List of other sources considered;

(6) Description of work to be performed or products to be furnished;

(7) Estimated or agreed contract price; and

(8) A statement of whether the contractor has started work or made delivery.

D. Contracting Officer Document. In addition to the memorandum from the person who made the unauthorized commitment, the CO must prepare a document that includes:

(1) A determination that supplies or services have been provided to the Government, or that the Government otherwise has obtained or will obtain a benefit from performance of the unauthorized commitment;

(2) The ratifying official could have granted authority to enter, or could have entered into, a contractual commitment at the time, and still has the authority to do so;

(31 The resulting contract would have been proper if made by an appropriate CO;

(41 A determination that the price is fair and reasonable, including the basis for such determination;

(5) The CO recommends payment, and legal counsel concurs in the recommendation, if required;

05) A citation of funds availability from the fiscal year in which the unauthorized commitment occurred;

jS-5.15 (D) Continued)

(7) The ratification is in accordance with any other Agency prescribed limitations.

The CO will review the report and, if it is acceptable, prepare a recommendation for ratification to either the PORA or to the Associate Director, OAM-depending on the dollar value of the unauthorized commitment. The report is then sent with the file to the POIU for consideration or for a recommendation by the PORA to the Associate Director, OAM, for consideration.

E. Approval Process. For unauthorized commitments totalling $25,000 or under, the PORA evaluates the documents submitted and, if found acceptable, authorizes the ratification. An approval letter is sent to the CO for execution of the appropriate contract documents.

For unauthorized commitments greater than $25,000, the PORA evaluates and makes a recommendation to the Associate Director, OAM, at IHS Headquarters who may authorize the ratification. In these cases also, the file is then returned to the CO for execution of the appropriate contract documents.

Unauthorized commitments are a serious matter. Should the PORA or Associate Director, OAM, refuse to authorize ratification action, the individual who initiated the unauthorized commitment may be liable for payment.

F. Execution of Ratification Documents.

As part of the process of ratifying an unauthorized commitment, the CO must review the ratifying contract document and ratification file to be certain that all requirements are met and are properly documented.

In executing such ratification documents, the CO in his/her letter of recommendation must insure that these documents meet the requirements of each of the limitations numbered (1) through (7) specified under FAR 1.602-3(c).

In order for the cognizant Finance/Paying Office to reimburse the IHS for supplies or services provided by an approved ratification, the cognizant CO is to issue a purchase order or contract, as appropriate, authorizing the delivery of and payment for such

(5-5. I5 (F) Continued)

supplies, services, or interest. It is imperative that the authorized payment be made promptly to avoid accrual of interest pursuant to the Prompt Payment Act.

G. Non-ratifiable Commitments. As specified under FAR 1.602-3(d), cases that are not ratifiable may be subject to resolution as recommended by the GAO under its claim procedures (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2).

5-5 16 CONTRACT PROTESTS. DISPUTES. AND APPEALS

A. This Section prescribes IHS policy and procedures for filing contract protests and for processing contract disputes and appeals.

In general, IHS policies and procedures regarding contract protests, disputes, and appeals are governed by the FAR, Part 33--Protests, Disputes, and Appeals; by the HHSAR, Part 333; and by the PHSAR, Part 333. In addition, the IHS also has certain special requirements for the review of all proposed dispute and appeal decisions.

Protests may occur before or after a contract award. Regardless of when a protest occurs, IHS policy is to attempt to resolve the contractual issues by negotiation and mutual agreement without resort to litigation.

Contract protests are governed by the terms of the FAR 33.1, the HHSAR 333.1, and the PHSAR 333.1.

Subsections C, D, and E describe the procedures for processing protests that are filed with the Agency, the General Accounting Office (GAO), or the General Services Board of Contract Appeals (GSBCA).

B. Contract Protests--Overview. The term "protest", as used in this Section, is defined under FAR 33.101 to mean "a written objection by an interested party to a solicitation by an agency for offers for a proposed contract for the acquisition of supplies or services or a written objection by an interested party to a proposed award or the award of such a contract. "

For the purpose of filing a protest, the term "interested parties" means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

C. Protests to the Agency. IHS COs shall notify the Headquarters IHS Protest Control Officer (PCO) by telephone immediately upon receipt of a written or oral intention to protest. A copy of the written protest shall be sent immediately upon receipt by the CO to the PCO, unless the CO is instructed otherwise.

If a protest has been filed with the CO before an award, the CO may not make an award unless he/she decides that it is necessary to do so in spite of the protest. The FAR, HHSAR, and PHSAR provide criteria used to

IS-S. 16 (C) Continued)

determine if an award is necessary. The CO shall prepare a formal determination and obtain the approval of the IHS, PCO, and the Office of General Counsel before awarding the contract. If the protest has been filed with the Secretary, is addressed to the Secretary, or requests referral to the Secretary, the CO shall also obtain approval of the Department Protest Control Officer (DPCO) prior to proceeding with the award. A sample format for preparing the determination is in Exhibit 5-5.16-A.

In all instances, the CO shall prepare a protest file and send four copies of the file to the IHS PCO. The files should be indexed and marked "IMMEDIATE ACTION-PROTEST BEFORE AWARD" or, for protests received after an award, "IMMEDIATE ACTION-PROTEST AFTER AWARD." The requirements for the contents of a protest file are contained in FAR 33.104 (a)(3)(ii), HHSAR 333.103, and the protest file index contained in Exhibit 5-5.16-B.

D. Protests to the GAO. The CO shall give priority attention to each protest filed with the GAO. For each such protest, a protest file shall be prepared and sent to the IHS PC0 within 10 working days from receipt of the protest. The CO's statement of facts and circumstances shall be submitted to the IHS PC0 within 15 working days from receipt of the protest.

When there is a protest, but the CO believes that an award should be made, the CO shall prepare a final decision and send it to the IHS PC0 for approval to award the contract. This approval must be obtained from the Deputy Assistant Secretary for Grants and Acquisition Management, OS.

When the protest is received after the contract has been awarded, the CO, in coordination with the PO, must decide whether to stop work or continue the contract. If the CO decides the contract should continue, he/she shall prepare a formal determination within 10 working days and send it to the IHS PC0 for review and final approval by the Deputy Assistant Secretary for Grants and Acquisition Management, OS. Additional requirements for protests to the GAO are contained in HHSAR 333.104 and PHSAR 333.104.

E. Protests to the GSA Board of Contract Appeals (GSBCA). When notification is received from the GSBCA of the filing of a protest, the CO shall immediately notify the Department PCO, the OGC, and the IHS PCO. If the solicitation is open, the CO shall send a written notice of the protest within one working day after receipt of the protest to all parties from whom a

(5-5.16 (E) Continued)

proposal or bid was solicited. If the solicitation has closed, a notice is sent to those who submitted a bid or offer.

Within ten work days of the filing of the protest, the following distribution of the protest files must be complete (i.e., materials are received by the appropriate officials):

(1) 1 copy to the IHS PCO;

(2) 2 copies to the Office of General Counsel (OGC)/Business and Administrative Law (BAL) Division, Parklawn Building; and

(3) 1 copy to the DPCO.

Protest files should be indexed and assembled in an orderly manner.

When there is a protest, but the CO believes that an award should be made, the CO shall prepare a final decision and send it to the IHS PC0 for approval to award the contract. The approval must be obtained from the Deputy Assistant Secretary for Grants and Acquisition Management.

F. Resolution of Disputes. Disputes over contract terms and performance can occur any time during the period of performance of a Government contract.

IHS policy is consistent with FAR 33.204 to try to resolve contractual issues by mutual agreement without litigation. When this is not possible, two avenues for resolution of disputes are available: administrative and judicial.

Most disputes under Government contracts are processed and settled under the administrative procedures. Administrative resolution of contract claims and disputes is under authority of the Contract Disputes Act of 1978. FAR 33.2 and HHSAR 333.2 concern the implementation of this Act. The "disputes clause" (FAR 52.233-l) included in all Government contracts provides for the judicial remedies available to the contractor include filing a claim with the U.S. Court of Federal Claims.

(5-5.16 (F) Continued)

The disputes clause requires that all contractor claims be submitted in writing to the CO. The CO is to prepare a written decision on the claim and send it to the contractor. A format for a final decision is in FAR 33.211. The notice of a final decision should be sent by registered mail, or certified mail, or delivered in person (if so. a receipt should be obtained) and should contain:

(1) A description of the claim or dispute;

(2) / Reference to the pertinent contract terms;

(3) A statement of the areas of agreement and disagreement;

(4) A statement of the CO's decision with supporting rationale; and

(5) A statement of the contractor's right of appeal.

On claims of $50,000 or less, the CO must render a final decision within 60 days after receipt of the claim. On claims over $50,000, the CO must issue a final decision within 60 days or notify the contractor of the time within which a decision will be issued. The time frame must be reasonable and be based on the circumstances that pertain.

The CO's decision must be submitted to the Office of General Counsel (OGC), Office of the Secretary (OS), or the Regional Attorney in the respective HHS Regional Office, for legal advice, format review and approval prior to sending the final decision to the contractor. A format for a final decision is in FAR 33.211. Concurrent with that submission, a copy must also be sent to the Director, DCGP, OAM, IHS, for review and approval. After approvals have been received, the CO sends the final decision in writing to the contractor by registered or certified mail.

Upon receipt of the CO's decision. the contractor has 90 days to appeal, in writing, to the Armed Services Board of Contract Appeals (ASBCA), or one year to file suit in the U.S. Court of Federal Claims if the contractor does not agree with the decision. If the 'contractor does not take action within this 90 day or one year period, respectively, the CO's decision on the claim is final and conclusive and is not subject to review by any other forum, tribunal, or agency of the Government.

(5-5.16 (F) Continued)

For appeals to the ASBCA, as required by HHSAR 333.212, the CO must assemble a file (referred to as the "Rule 4" file) within 30 days of receipt of an appeal or notice that an appeal has been filed. Suggested format for transmitting the file to the ASBCA is shown in HHSAR 332.212-70. The CO must forward the file to the Government Trial Attorney for review and approval.

Documents to be included in the file are specified in HHSAR 333.212.

After the Government Trial Attorney has approved the file, the CO shall prepare four copies (or more if so requested) of the file and distribute one copy to each of the following:

(1) ASBCA;

(2) Appellant;

(3) Government Trial Attorney;

(4) IHS Protest Control Officer.

ASBCA will hear the case and render a decision. If the contractor accepts the decision, the dispute is resolved. If the contractor or the Government chooses to appeal the decision of the ASBCA or the U.S. Court of Federal Claims, the parties must perfect their appeals to the U.S. Court of Appeals for the Federal Circuit within 120 days from the date of the decision.

If the contractor elects to resolve the decision through the US. Court of Federal Claims, in lieu of ASBCA, HHS will be represented by the U.S. Department of Justice. In this case, the CO will coordinate all actions through the HHS , Office of General Counsel.

The Contract Disputes Act provides for other rights and responsibilities that may be applicable, including an accelerated procedure.

5-5.17 POST-AWARD GUIDANCE

A. Overview. After an IHS acquisition contract is awarded, two essential "follow through" processes remain to be performed by IHS contract personnel before the contract may be considered fully completed and all IHS contract management responsibilities may be conridered fully met.

(1) "Contract Administration" is the first of these processes and involves monitoring contractor performance, maintaining contract award files (discussed in detail under Section 6). resolving contract problems, and making sure that the contract is fully executed according to its terms. Proper administration of procurement contracts is critical to the IHS fulfilling its mission to provide quality and timely health care services in a cost-effective manner to the American Indian and Alaska Native population it serves.

(2) "Contract Closeout" is the second process and involves the formal completion of all final contract activities and obligations. This includes determination and documentation in the file that the contract has been completed and that the necessary certifications and disposition of funds has taken place.

(3) IHS policy, in the period after award of every acquisition contract, is always to strive:

a. For quality in contract administration;

b. For quality in the efficiency of contract closeout.

B. Contract Administration. Contract administration is the process that ensures that the contract is performed according to its terms. There are three goals in this process--quality and conditions, timeliness, and cost containment.

Federal regulations addressing contract administration are found in the FAR Parts 32, 33, 42, 43, 45, 46, and 49, and in the HHSAR Parts 332, 333, 342, and 345.

(1) GeneralThe CO must be certain that products and services delivered to the IHS meet the requirements in the contract. If a product or service is not delivered at the time it is needed, it may be of reduced value or even worthless, If the contractor does not meet contract delivery schedules, it may jeopardize the ability of IHS to complete a project, or to fulfill an obligation on time.

(5-5.17 (B) Continued)

With cost reimbursement contracts, the IHS has the additional responsibility to see that contract funds are monitored to ensure that the Government reimburses only those costs that are reasonable, allowable, and allocable.

Contract administration can be relatively simple or very complex depending on the type of contract, contractor performance, or the nature of the work. For example, fixed-price contracts (with the exception of construction contracts) often require limited contract administration. Cost reimbursement contracts, on the other hand, require close technical surveillance and monitoring of costs. No matter what type of contract is involved, a breakdown in contract administration can undo all the careful effort involved in the negotiation, selection, and award of a contract.

The contract administration process includes:

a. Monitoring the contractor's technical progress and performance;

b. Reviewing and approving invoices for payment;

c. Controlling the use of Government property;

d. Approving the use of subcontracts;

e. Processing contract modifications;

f. Processing terminations; and

g. Resolving disputes.

The CO is responsible for contract compliance. However, the CO depends on program, technical, and financial personnel for support. The PO, formally appointed by the CO, plays a major role in this process by monitoring work progress, identifying delays, determining needed changes, and providing advice and assistance to the CO.

The key to effective procurement contract administration is to constantly monitor contractor performance. Such monitoring helps to avoid potential problems, and to identify and resolve existing problems. Monitoring contractor performance

(5-5.17 (B) Continued)

is accomplished by reviewing progress and financial reports, and by making on-site reviews as necessary.

(2) Site Visits. The purpose of a site visit to a contractor's location is to review contract performance and discuss with the contractor's representative any problems that might have developed. Site visits may not be necessary for all contracts. On the other hand, when a contract is large and complex, the visits may be essential. The need and frequency of site visits should be jointly determined by the CO and the PO. The visits should be made by the PO and/or the CO or Contract Specialist assigned to the contract.

Site visits should be conducted in such a manner as to minimize any adverse impact or interference with the contractor's ability to perform.

The site visit may include:

a. A check of actual performance compared to scheduled and reported performance;

b. A review of the facilities and working conditions; and

c. Verification that labor and other costs charged on a cost reimbursement contract are necessary to the performance of work under the contract,

When the site visit is completed, a report should be included in the contract file. A sample format is in Exhibit 5-5.17-C.

(3) Inspection and Acceptance. The PO is required to promptly inspect the contractor's supplies and/or services to see if they are acceptable. Failure of the Government to promptly inspect and accept supplies and services may result in the contractor being entitled to the payment of interest pursuant to the provisions of the Prompt Payment Act. This Act currently allows seven days after receipt of supplies or services for acceptance to occur without any accrual of interest.

For Fixed-price contracts, acceptance or rejection by the Government must occur within seven days of receipt. A report which discusses whether or not the

(S-5.17 (B) Continued)

delivered supplies or services meet the requirements stated in the contract must be sent to the CO by the PO. The reasons for any proposed rejections shall be clearly stated. If the furnished supplies or services are acceptable, the PO may indicate his/her acceptance by signing the invoice or voucher. For payments made by a fiscal intermediary, see the discussion under Subsection 31-Fiscal intermediary in Section 13--Contract Health Services of this Chapter. If any of the furnished supplies or services are unacceptable, a report which discusses the reasons for any proposed rejection must be sent to the CO. The definitions of Inspection and Acceptance are in FAR 46.101.

(4) "Changes" Clause. The contract clause entitled "Changes" allows the Government to alter certain aspects of the work to be performed without the consent of the contractor within the general scope of the contract. The Government must provide for an equitable adjustment in contract costs and in the delivery and performance period, based on the nature of the change if it involves additional costs and may be required to provide additional time for delivery or performance. The FAR 43.205 prescribes the use of alternative "changes" clauses that are to be included in the contract as appropriate.

The standard "changes" clause for both Fixed-price and Cost-reimbursement contracts provides that the Government has a unilateral right to make changes within the general scope of the contract in any of the following:

a. Drawings, designs, or specifications (in supplies) where the supplies are to be specifically manufactured for the Government;

b. Method of shipment or packing; and

c. Place of delivery, acceptance, or place of performance.

A contract change can be accomplished by a "supplemental agreement" between the contractor and the Government. Such a supplemental agreement is the preferred method for making a contract change. The supplemental agreement allows for the adjustment of price and/or cost by mutual agreement between the contractor and the Government. A supplemental agreement is also to include a contractor's statement of release which precludes future claims for equitable relief by the contractor.

(5-S. 17 (B) Continued]

When time or other factors do not permit a supplemental agreement to be reached and issued, a "unilateral change order" may be issued by the Government.

When a change order is issued, the contractor must complete the work as ordered (FAR 43.201(b)). If the change requires the contractor to incur additional costs or takes additional time for performance or delivery, the contractor may submit a claim for an equitable adjustment. The claim must be submitted by the contractor within 30 days, and before receipt of final payment under the contract. If the cost of the work is decreased as a result of the change order, the Government has the right to a price adjustment.

As indicated in FAR 43.2, a "change order" may only be:

a. Issued by the CO;

b. Within the general scope of the contract; and

c. Written using Standard Form 30, Amendment of Solicitation/Modification of Contract. (In emergency situations, the PO may request the CO to issue an oral change order, which subsequently shall be confirmed in writing.)

Change orders should be negotiated or definitized as quickly as possible in order to avoid problems in determining the cost of the work required by the change.

The CO should make sure that each change order is complete and should discuss each such order with the PO before issuance.

(5) Government Property. Under FAR 45.102, contractors generally are required to furnish the property necessary to perform Government contracts. Sometimes it is in the Government's best interest to provide property, material, or supplies for the contractor's use. This is especially true when the Government property, provided to the contractor. will save the Government money.

15-5.17 (B) Continued)

If a contractor asks for IHS property under a contract and the IHS agrees, HHSAR 345.3 requires the CO to make a written determination to authorize the property. A sample format for determination is included as Exhibit 5-5.17-B. This determination must show:

a. That no practical or economical alternate exists;

b. That the Government will receive adequate compensation for the property, or

c. That furnishing Government property will result in lower costs.

The PO and the Area Property Management Officer should also review and agree with this request, and make a recommendation regarding this request to the approving official. In the IHS, the clearance authority to approve of the disposition of Government furnished property is delegated as follows:

a. Less than $1,000 per item -- CO or $5,000 total.

b. $1,000 or more -- Agency Property Officer per item or $25,000 total.

However, only **the** CO can specifically authorize the contractor to use or acquire Government property used under a contract.

The contractor is responsible for the proper maintenance and control of IHS property provided under a contract in accordance with the requirements specified in the DHHS publication, "Contractor's Guide for Control of Government Property.", The responsible Property Management Officer must also review the contractor's property control system and monitor compliance with any limitations or conditions for its use.

When a contract ends, the IHS property must be disposed of following IHS property management procedures. When a continuing requirement exists, the property may be transferred to a succeeding contract as determined by the CO.

(5-5.17 (B) Continued)

(6) Payments. The Government has an obligation to pay the contractor for supplies or services delivered or performed. Under a fixed-price contract, the exact amount to be paid has been stated in the contract. Under cost-reimbursement contracts, the Government is only obligated to pay the contractor for reasonable, allowable, and allocable costs incurred in performing the work.

On Cost-plus-fixed-fee contracts, the Government pays for the costs incurred plus an agreed upon additional fixed-fee amount, stated in the contract.

Under a Fixed-price contract, payments may be made in the following ways if stated in the contract:

a. A single payment upon completion and acceptance of all work under the contract;

b. Partial payments upon partial delivery and acceptance;

c. Progress payments;

d. Advance payments under exceptional circumstances.

Under a Cost-reimbursement contract, usually, the contractor submits a monthly invoice or voucher with documentation supporting the costs claimed. The invoice/voucher should be reviewed and, if acceptable for payment, be signed by both the PO and CO. It is then sent to the paying office.

If any amount on the invoice/voucher is to be suspended or disapproved, it must be so noted, along with the reasons for the suspension or disapproval. Under HHSAR 342.7003, payment cannot be made when a report is overdue or when the contractor fails to perform or deliver work/services required by the contract.

Contractor invoices/vouchers to the IHS must be processed promptly. Under the Prompt Payment Act, payments under the fixed-price contracts must be made in 30 days of receiving a proper invoice or 30 days after accepting supplies or services, whichever is later. If a contractor submits an invoice

(5-5.17 (B) Continued)

directly to the CO, HHSAR 332.905 requires that the CO process a proper invoice within 16 days.

in contracts with advance payment provisions, monies are advanced, as provided in the contract, through transfers of funds based on contractor submissions for drawdowns to the Fiscal Office handling advance payments.

(7) Termination. Two methods of termination are covered by standard contract clauses: (1) termination for convenience of the Government and, (2) termination for default. The FAR Part 49--Termination of Contracts, describes in detail the policies and procedures that govern complete or partial termination of contracts for the convenience of the Government or for default.

a. Under a termination for convenience, the Government has a right to cancel a contract when it is determined by the CO to be in the Government's best interest. Cancellation of a contract may prove to be expensive. Usually, these terminations occur because of changes in Government requirements or because of funding limitations. Before issuing a termination notice, the CO shall notify the Awarding Activities Office, SCO, and the PORA.

A written notice of termination must be sent to the contractor. It must clearly state that the contract is being terminated. Suggested formats are shown in FAR Subpart 49.102.

Where possible, the CO is encouraged to negotiate a settlement that is mutually agreed upon ,at the time of contract termination, and to incorporate this final settlement into the contract modification. Settlement claims submitted by the contractor must be promptly reviewed by the CO who negotiates a settlement. All settlement proposals over $100,000 must be submitted for appropriate audit agency review and recommendations. After completing a settlement negotiation, a memorandum detailing how the agreement was reached must be written and included in the contract file.

b. Under a termination for default, the Government terminates the contract because of the contractor's actual or anticipated failure to perform its contractual obligations. if termination for default is considered, the CO must formally notify the contractor in writing of the failure to perform. The contractor has 10 days to correct the failure.

(55.17 (B) Continued)

In the event an agreement cannot be reached, the CO is to follow the procedures outlined under FAR 49.109-7. This notice is called a Cure Notice. It must detail the provisions of the contract that the contractor has failed to meet.

Sample notices are shown in FAR 49.607. If the contractor fails to cure the situation or to provide a satisfactory explanation for its delay, a termination notice may be issued.

The content for the termination notice is in FAR 49.402-3(g).

If a fixed-price contract is terminated for default, the contract provides that the Government may procure similar supplies or services from another contractor. The original contractor may be liable for any excess cost for acquiring replacement items or services. Additionally, the contractor may be liable for any liquidated or actual damages or for liquidated damages, if provided for in the contract.

C. Contract Closeout. There are two tests that a CO must apply before proceeding to close out a contract: (1) if the contract is physically complete, and (2) if the contract is administratively complete.

A contract is physically complete when all required items are delivered and/or services have been performed and accepted. A contract is administratively complete when all audits, releases, and payments are finalized and the required documentation is in the file.

Contract closeouts are addressed in the following regulations: FAR Subpart 4.804 and HHSAR Subpart 304.804.

(1) There can be a tendency to lose interest in a contract after the goods or services have been accepted. It is important that the administrative actions required to complete and close a contract be performed as soon as possible. Delays may result in funds being tied up that are owed to the contractor or the Government. In addition, unresolved matters become more difficult to reconcile as time passes.

The CO has the primary responsibility for contract closeout. The PO must certify that goods were delivered and accepted or that services were completed satisfactorily. This is usually done by a memorandum

(55.17 (C) Continued)

from the PO to the CO. The memorandum becomes a part of the contract file. If Government property was used under the contract, the Property Management Officer must provide information regarding the disposition of the property. The contractor must submit a final invoice and other required information before the contract can be closed. There are also other actions that must be completed before closeout. These additional actions are outlined in FAR 4.804-5.

(2) Fixed-Price Contract. Under FAR 4.804-1(a)(2), Fixed-price contracts should be closed within six months of the month the CO receives evidence of completion. This may be done with an acceptance report for service or supply contracts, or a memorandum from the PO for a service-type contract. A contract closing memorandum and checklist shall be included in the file. A sample format is included as Exhibit 5-5.17-C.

(3) Cost-Reimbursement Contracts. As specified in HHSAR 304.804-1(3), Cost-reimbursement contracts should be closed within 20 months from the month the CO receives evidence of physical completion. This evidence should be a memorandum from the PO attesting to satisfactory performance and completion of the contract requirement.

Cost-reimbursement contracts may have requirements to address that are not applicable in Fixed-price type contracts. This includes overhead rates, patents, and royalties. The CO is responsible for ensuring that these matters are addressed in the close-out memorandum. .

(4) Audit Responsibilities. HHSAR 304.870 has audit procedures to be followed for cost-reimbursement contracts. The procedures include both desk and field audits. Desk audits are performed by the CO or a Cost Analyst. The audit is based on the information contained in the contractor's vouchers and payment records, and on occasion, discussions with the cognizant Government auditor, when appropriate.

Field audits are performed by auditors who do on-site review of the contractor's financial system and/or specific contracts. The following is a summary of the requirements for desk and field audits for cost-reimbursement contracts.

15-S. 17 03 Continued)

DESK AUDITS	Contracts with colleges and universities, hospitals, and State and local governments. Also, contracts under $500,000 with other institutions and organizations.
FIELD AUDITS	Contracts over $500,000 with commercial organizations and non-profit organizations other than colleges and universities, hospitals, and State and local units of government for which an agency other than HHS has audit authority.

Note that IHS contracts with state, local, and other governmental units, and with Indian tribes, are currently covered by single audit requirements, in P.L. 98-502, the "Single Audit Act," as amended.

55-5. I7 03 Continued)

DESK AUDITS Contracts with colleges and universities, hospitals, and State and local governments. Also, contracts under $500,000 with other institutions and organizations.

FIELD AUDITS Contracts over $500,000 with commercial organizations and non-profit organizations other than colleges and universities, hospitals, and State and local units of government for which an agency other than HHS has audit authority.

Note that IHS contracts with state, local, and other governmental units, and with Indian tribes, are currently covered by single audit requirements, in P.L. 98-502, the "Single Audit Act," as amended.

5-5 18 LEASING.

A. Overview. This Section references IHS policy and procedures for the leasing of real property, including the lease of building space and of personal property, such as equipment and motor vehicles. Specific leasing regulations are contained in the FAR Part 7.4 for equipment, in the FAR 8.11 for motor vehicles, and in the "Federal Property Management Regulations" (FPMR), 41 CFR Part 101-16 for building space and other real property. Each of these Federal regulations is Government-wide in scope, governing the leasing activities of all Federal agencies, not just the IHS.

Within the IHS, the IHM, Part 5, Chapter 11 -- Real Property discusses IHS real property management policies and should be referred to in planning and executing a real property lease activity. This IHM chapter also discusses the special conditions that apply to IHS real property leases with Indian tribes.

Similarly, IHM, Part 5, Chapter 12 - Personal Property describes IHS personal property management policies, including leasing.

B. . PHS Lease Contracting Officer Warrant Program. Effective July 28, 1992, PHS implemented a warrant program for lease contracting officers to assure that real property leases are executed by officials who have appropriate experience and training. Under this program, appointments (as described in 48 CFR 1.603-3) will be used to provide lease contracting officers with signature authority to acquire real estate by lease pursuant to the authorities contained in 41 CFR 101-18, specific delegations of authority from the Administrator of the GSA, and/or as provided by statute. The OES, PHS, in Regions II, VI, and X have warrant authority to negotiate and sign all lease agreements on behalf of the IHS.

The memorandum which contains the requirements and implements the PHS lease contracting officer warrant program which was signed by the Director, Office of Management, Public Health Service, on July 28, 1992, is provided in Exhibit 5.5-18-A.

C, Acquisition Real Property bv Lease. The Director, Division of Facilities Management, OEHE/HQE, has delegated signatory authority for all form SF-8 1, Requests for Space.

(1) Requests for leasing GSA-assigned building space must be approved as specified in FPMR 101-17.101. These requirements are processed

/S-5.18 (C) Continued)

through the cognizant IHS Area Realty Officer and at IHS Headquarters.

(2) The IHM, Part 5, Chapter 11 - Real Property, Section 5-l 1.4, Acquisition by Rationale, describes IHS procedures and approvals required for the lease of real property, including special purpose space.

(3) IHS real property leases with Indian tribes are governed by the specific policy requirements under the IHM, Part 5, Chapter 11 -- -Real Property, Section 5-l 1.4, Direct Lease of Real Property.

Except for GSA-assigned space, all requirements for leased space must be approved by the IHS Lease Priority Committee through an application to the Lease Priority System (LPS). Instructions and forms .for LPS applications are provided in the "Facilities Engineering Technical Handbook," Volume 4, Chapter 7 - IHS Lease Priority System.

The appropriate leasing forms are available through the IHS Area or Headquarters Real Property Management Office. Descriptions of these forms are provided under 48 CFR 570.8, Forms Used for Contracting for Leasehold Interests in Real Property.

D. Personal Property.

(1) Equipment. The decision to either lease or purchase equipment should be based on a case-by-case evaluation of the comparative cost and other factors relevant to the specific requirement. These factors are set forth in FAR 7.40(a). Assistance and advice in making a lease versus a buy decision may be obtained from the cognizant IHS Property Management Officer at the Area Office or at IHS Headquarters.

(2) Motor Vehicles. Leasing of motor vehicles must be coordinated with the cognizant IHS Property Management Officer at the Area Office or at IHS Headquarters.

3-5.19 SELF-DETERMINATION CONTRACTS.

A Overview. In 1975, the Indian Self-Determination and Education Assistance Act was signed into law as Public Law 93-638 by President Gerald Ford. The central purpose of this legislation was to provide Federally-recognized American Indian tribes and Alaska Native groups with the right to contract directly with Federal agencies to receive funds to provide various services that heretofore had been provided by these agencies.

As Public Law 93-638 has been amended by the Congress over the past twenty years, the obligation and involvement of the IHS in self-determination contracting has continued to expand.

Within the IHS, the Office of Tribal Activities (OTA) is primarily responsible for the coordination of the Agency's self-determination contracting policies and procedures.

B. Policy. Public Law 93-638 self-determination contracting is considered non-procurement contracting. As such, self-determination contracting involves a direct "government to government" relationship between the Federal Government and the various American Indian and Alaska Native governments. For administrative purposes within the IHS, however, the self-determination contracting process has been institutionalized around the acquisition function.

Pending issuance of joint, final self-determination regulations by the IHS and the Bureau of Indian Affairs (BIA), IHS "683 contracting" policy is governed by the Public Law 93-638 statute, as amended; relevant legislative history; existing Federal regulations, and IHS directives.

At present, IHS self-determination policy and advisory directives are compiled in an Interim Guidebook published by the OTA. The purpose of the Interim Guidebook is to centralize in one reference source all current operating instructions regarding the self-determination contracting process. Applicable policies include Indian Self-Determination Memoranda (ISDMs) issued by the OTA and Contract Policy Letters (CPLs) developed by the OAM, Division of Contracts and Grants Policy (DCGP). The Interim Guidebook also includes Indian Self-Determination Advisories (ISDAs) which focus on **more** specific 638 contracting issues or problems and which are issued by the OTA, as the need arises.

(5-5.19 (B) Continued)

The IHS will continue to operate within the framework of the Interim Guidebook until the joint IHS/BIA final regulations are published. In general, these interim policies are "binding" on 638 tribal contractors only to the extent that they are included in statute or Federal regulation, or have been explicitly incorporated into a tribal contract.

As policy related questions are received from Headquarters, Area Offices and Service Units, the Director of Self-Determination Services (DSDS) may call a Leadership Team Meeting, comprised of designated representatives of all IHS Associate Directors, to examine issues as they arise and make recommendations for their resolution.

The DSDS determines if an ISDM or ISDA is required, formulates the interim policy, and coordinates it with the Division of Management Policy (DMP) for issuance.

C. Current Policy References. The following reference list from the Interim Guidebook reflects all current ISDMs, CPLs, and ISDAs. ISDMs and ISDAs that are not specifically included in this reference list have been officially rescinded and should be discarded. Once the IHS/BIA joint regulations are officially approved, OTA/DSDS will consolidate all IHS 638 interim policies in the IHM, Part 4 -- Staff Services/Special Programs, Chapter 5 -- Office of Tribal Activities, which is reserved for this purpose.

/5-5.19 (0 Continued)

IHS INTERIM GUIDEBOOK ON THE PUBLIC LAW 93-638 CONTRACTING PROCESS:

Chronoloeical Index of Policies & Advisories

Policies

ISDM 81-2	Planning for ISD activities
ISDM 81-3	Contra&g process under ISD
ISDM 81-4	Minimum health standards
ISDM 82-1	Funding ISD personnel
tSDM 854	Nonrecurring personnel costs
ISDM 87-1	Sample contract
ISDM 87-3	Facilities planning/construction
ISDM 88-2	Funding levels
ISDM 89-1	FTCA coverage - medical and non-medical
CPL 89-3	Interim guidance
CPL 89-4	Provisions effective w/amendments
CPL 89-5	Quarterly reconciliation reports
CPL 90-2	Procurement integrity
CPL 90-3	Use of ISD contracts
CPL 90-6	Conversion to calendar years
CPL 90-7	Construction/preaward reviews
CPL 90-8	Review of decisions
CPL 90-9	Contract simplification measures
CPL 90-l 1	Contract management
CPL 90-12	Clarification of CPL 90-9
CPL 92- 1	Coverage for medical and non-medical related claims under the Federal Tort Claims Act, P.L. 93-638 contractors and grantee
ISDM 92-2	Contract support cost policy
ISDM 923	MS Headquarters P.L. 93-638 leadership team

Advisories

ISDA 2 Contractibility functions
ISDA 3 Title to propeny
ISDA 6 Information disclosure
ISDA 10 Contractibilitylhcalth boards
ISDA 12 Retirement contributions
ISDA 14 Physicians comparability allowance
ISDA 16 IPA assignments/no ISD contract
ISDA 17 Waiver of IPA rquirements
ISDA 18 IPA assignments to tribes
ISDA 19 Adquacy of trained personnel
ISDA 20 Severance pay
ISDA 21 Personnel policieslretroccssion
ISDA 22 Charging Indians for services
ISDA 23 Resolutions for renewals
ISDA 24 lndian preference

{S-S. 19 (Cl Continued)

ISDA 25 Licensing
ISDA 30 Conversion to calendar years
ISDA 32 Interim clause for "method of payment" to be incorporated in Section G.2, "Sample 638 cost reimbursement contract* ISDM 87-1

5-5.20 TRIBAL SELF-GOVERNANCE COMPACTS

A, The Indian Self-Determination and Education Assistance Act Amendments of 1988, Public Law 100-472, amended the Indian Self-Determination and Education Assistance;Act, Public Law 93-638, in part, by adding a new "Title III - Tribal Self-Governance Demonstration Project."

(I) As a result of this Public Law loo-472 amendment, the Department of the Interior, Bureau of Indian Affairs (BIA) was required to develop special policies and procedures that will govern contractual relationships with Indian tribes that choose to receive BIA funding support under a tribal self-governance compact.

(2) Public Law loo-472 did not include the IHS, or IHS programs, under the new Title III self-governance requirements. In a subsequent amendment under Public Law 102-184, however, the Congress added a new Section 308 to Public Law 93-638. This new Section directed the Secretary of HHS to conduct a study for the purpose of determining the feasibility of extending the self-governance demonstration project to include activities, programs, functions, and services of the IHS. It also gave authority to establish within the II-IS an Office of Self-Governance to be responsible for coordinating the activities necessary to carry out the study.

(3) Without benefit of the feasibility study, self-governance demonstration project authority was extended to the IHS by Public Law 102-573, the Indian Health Care Amendments of 1992.

Under the Public Law 102-573 amendment, the Secretary of HHS is authorized to negotiate and implement a Compact of Self-Governance and Annual Funding Agreement with each participating tribe upon completion of an authorized planning activity or a comparable planning activity. Up to thirty tribes could be selected to participate in the project.

(4) The Compacts and Annual Funding Agreements authorize a participating tribe to plan, conduct, consolidate, and administer programs, services and functions of the IHS that are otherwise available to Indian tribes and Indians under other Federal authorizing statutes.

55-5.20 (A) Continued)

(3 Agreements authorize a participating tribe to redesign programs, activities, functions or services and to reallocate funds for such programs, activities, functions or services. The Agreements provide for payment of funds from one or more programs, services, functions, or activities in an amount equal to that which the tribe would have been eligible to receive under Self-Determination contracts and grants, including direct program costs, and for any funds which are specifically related to the provision by the IHS of services and benefits to the tribe and its members.

(6) The IHS is currently in the process of developing self-governance policies and procedures under the terms of Title III of P.L. 93-638, as amended. The IHS has negotiated for FY 1995, and Calendar Year 1995, Compacts and Annual Funding Agreements with over thirty tribes.

5-5.2 1 GLOSSARY

TERM, WORD, or
CONCEPT

Definition

Reference to FAR or other authority

ACCEPTANCE

(1) The act of accepting an offer.

(2) The act of an authorized representative of the Government by which the Government, for itself or as agent for another, assumes ownership of existing, identified supplies tendered, or approves specific services rendered as partial or complete performance of the contract.

FAR 46.101.

ACQUISITION

The acquiring by contract, with appropriated funds, of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation, and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

FAR 2.1.

ACQUISITION PLAN

A plan for an acquisition which serves as the basis for initiating the individual contracting actions necessary to acquire a system or support a program.

FAR 7.104 and 1.105.

ACQUISITION PLANNING

The process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost: includes development of an overall strategy for managing the acquisition.

FAR 7.101.

ADMINISTRATIVE LAW

Rules, regulations. and decisions made by instrumentalities of the Federal Government that have the force and effect of law.

FAR 46.101.

ADVANCE PAYMENTS

Advances of money by the Government to a contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance, or partial performance of a contract.

FAR 32.102(a).

AGENCY

One party, known as the principal, appoints another party.‘ known as an agent. to enter into a business or contractual relationship with a third party. In Government contracting, the principal, agent, and third party are respectively the Government, Contracting Officer (CO), and contractor.

AGREEMENT

Negotiated understandings on terms and conditions that will be incorporated in forthcoming contracts between the two. By definition, an agreement does not contain all the elements necessary to be considered a contract. See Basic Agreement and Basic Ordering Agreement.

ALLOCABLE COST

A cost is allocable to a Government contract. if it:

Is incurred specifically for the contact;

Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or

Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

FAR 31.201.4.

AMENDMENT

A change (correction, deletion, or addition) to any information contained in an IFB or RFP (or previous amendment thereto). The amendment becomes part of the solicitation and any resulting contract.

FAR 14.208and15₁410.

ANTI-DEFICIENCY ACT

A law prohibiting the obligation of money in advance of any appropriation or in excess of the amount of an available appropriation.

ANTI-TRUST VIOLATION

Practices that eliminate competition or restrain trade, such as collusive bidding, follow-the-leader pricing, rotated low bids, collusive price estimating systems, and sharing of the business.

FAR 3.301.

APPROPRIATION

Authority to obligate public funds that will result in immediate or future outlays.

ASSIGNMENT OF CLAIMS

The transfer or making over by the contractor to a bank, trust company, or other financing institution -- as security for a loan to the contractor --- of its right to be paid by the Government for contract performance.

FAR 32.801.

AUCTION

A negotiation tactic prohibited under FAR 15.610. Prohibited auction techniques include:

Indicating to an offeror a cost or price that it must meet to obtain further consideration;

Advising an offeror of its price standing relative to another offeror (however, it is permissible to inform an offeror that its cost or price is considered by the Government to be too high or unrealistic);

Otherwise furnishing information about other offerors' prices.

FAR 15.610 (d).

AUDIT

A review of a company's accounting procedures, accounting practices, books, records, documents, and other evidence related to (a) cost or pricing data or (b) costs claimed to have been incurred or anticipated to be incurred in performing a contract.

FAR 15.215.2.

AUTHORIZATION LEGISLATION

A law which permits the establishment or continuation of Federal programs and agencies. Authorizing legislation is normally required before the enactment of budget authority, and such authority is normally provided in a separate appropriations act.

AWARDING ACTIVITIES OFFICE

Within the IHS, the term "Awarding Activities Offices" includes (1) the eleven IHS Area Offices and the Office of Health Program Research and Development (OHPRD) in Tucson, Arizona; (2) the Offices of Engineering Services (OES) within the PHS Regional Offices for Regions II, VI, and X; (3) the IHS Headquarters West in Albuquerque, New Mexico; and (4) the IHS Supply Service Center in Perry Point, Maryland.

BASIC AGREEMENT

A written instrument of understanding, negotiated between an agency or contracting activity and a contractor, that (1) contains contract clauses applying to future contracts between the parties during its terms and (2) contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement. A basic agreement is not a contract.

BASIC ORDERING AGREEMENT (BOA)

A written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor, that contains (1) terms and clauses applying to future contracts (orders) between the parties during its term. (2) a description, as specific as practicable, of supplies or services to be provided, and (3) methods for pricing, issuing, and delivering future orders under the basic ordering agreement. A basic order agreement is not a contract.

BEST AND FINAL OFFER (BAFO)

In competitive negotiations, proposals prepared by offeror in the competitive range following completion of discussions and receipt of a written request for BAFOs from the Contracting Officer.

FAR 15.611.

BID

An offer in response to an Invitation for Bids.

See definition of offer in ***FAR 2.1.***

BID GUARANTEE

A form of security assuring that the bidder (a) will not withdraw a bid within the period specified for acceptance and (b) will execute a written contract and furnish required bonds, including any necessary coinsurance or reinsurance agreements, within the time specified in the bid, unless a longer time allowed, after receipt of the specified forms.

FAR 28.001.

BIDDER

An offeror who submits a bid in response to an Invitation for Bids.

BOARD OF CONTRACT APPEALS (BCA)

An instrumentality of a Federal department or agency which hears contractor appeals of Contracting Officer decisions on claims arising under or relating to a contract subject to the Contract Disputes Act.

BOND

A written instrument executed by a bidder or contractor (the "principal"), and a second party (the "surety" or "sureties"), to assure fulfillment of the principal's obligations to.a third party (the "obligee" or "Government"), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

FAR 28.001.

BUY AMERICAN ACT

An act requiring that only domestic end products be acquired for public use, except articles, materials, and supplies:

For use outside the United States.

For which the cost would be unreasonable, as determined in accordance with FAR 25.105.

For which the agency head determines that domestic preference would be inconsistent with the public interest.

That are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality (see FAR 25. 108).

Purchased specifically for commissary resale.

CHANGE ORDER

A written order signed by the Contracting Officer, directing the contractor to make a change that the Changes clause authorizes the Contracting Officer to order without the contractor's consent. A change order is an example of a unilateral modification (see Modification).

FAR 43.101.

CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

A council chaired by a representative of the GSA and consisting of members representing twelve civilian agencies, which, along with the Defense Acquisition Regulatory Council (DARC), has responsibility for maintaining the Federal Acquisition Regulation.

CLAIM

A written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

FAR 33.201.

CLOSEOUT

The process for closing out the contract file following physical completion (i.e.. discharge) of a contract.

FAR 4.804.

CODE OF FEDERAL REGULATIONS (CFR)

Codification of rules published in the Federal Register by the executive departments and agencies of the Federal Government.

COLLUSION

Any consultation. communication, or agreement between two or more offerors or competitors relating to proposed prices, the intention to submit an offer, or the methods or factors used to calculate the prices offered.

FAR 52.203-2 (a) (I).

COMMERCE BUSINESS DAILY (CBD)

A publication of the U.S. Department of Commerce in which Government agencies are required to announce (IFBs and RFPs) procurement invitations, contract awards, and sales of surplus property. A new edition of the CBD is issued every business day. Each edition contains about 500 to 1,000 notices. Each notice appears in the CBD only once.

Readers Guide in the CBD.

COMMON LAW

Decision handed down by judges in courts of law.

COMPETENT

An agent for a contracting party who, at the time of agreement is:

Of sound mind,

Free of the influence of drugs or alcohol, and

Otherwise legally.authorized to enter into the agreement on behalf of the party.

COMPETITIVE RANGE

All proposals that the CO determines have a reasonable chance of being selected for award, based on cost or price and other factors that were stated in the solicitation. Unless the CO decides to award without discussions, the CO must conduct written or oral discussion with all responsible offerors who submit proposals within the competitive range.

FAR 15.609 and 15:610.

CONSIDERATION

Anything of value that changes hands between the parties to a contract.

CONTINGENT FEE

Any commission, percentage. brokerage. or other fee that is contingent upon the success that the person or concern has in securing a government contract.

FAR 3.401.

CONTRACT

A mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and are in writing (unless otherwise authorized). Contracts can include bilateral instruments, awards, and notices of awards, job, and task orders issued under basic ordering agreements, letter contracts, orders such as purchase orders that become effective when accepting in writing or when the contractor performs, and bilateral contract modifications. Contracts do not include grants, cooperative agreements, or interagency agreements.

FAR 2.1.

CONTRACT CLAUSE

A term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award. Clause states the right and obligations of the parties to a contract.

FAR 52.101 (a).

CONTRACT MODIFICATION

Any written change in the terms of a contract. Unilateral modifications are signed only by the CO; bilateral by both parties.

FAR 43.101 and 43.103.

CONTRACT SCHEDULE

The complete statement of the requirement in the solicitation. including not only the Statement of Work and Specifications, but also the terms and conditions with respect to packaging and marking, inspection and acceptance, deliveries or performance, contract administration data, and other special contract requirements. The Schedule includes Sections A through H of the Uniform Contract Format.

FAR 14.201-2, 14.201-P(h), and 15.406-z.

CONTRACT TYPE

(1) The name of the compensation arrangement established by the terms and conditions of the contract, such as Firm fixed price, Fixed price redeterminable, Cost plus award fee, Cost plus fixed fee, or Cost plus incentive fee.

(2) The name of the ordering arrangement established by the terms and conditions of an indefinite delivery contract, such as Definite Quantity, Indefinite Quantity, or Requirements.

FAR 16.101 and 16.501(a).

CONTRACTING

The purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes the solicitation and selection of sources, preparation and award of contracts, and all' phases of contract administration. It does not include making grants or cooperative agreements.

FAR 2.1.

CONTRACTING ACTIVITY

An element of an agency designated by the agency head and delegated board authority regarding acquisition functions.

FAR 2.1.

CONTRACTING OFFICER (CO)

An agent of the Government (see "agency") with authority to enter into, administer, or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer, such as Administrative Contracting Officer (ACO) who administers the contract or a Termination Contracting Officer (TCC who settles terminated contracts.' A single Contracting Officer may be responsible for duties in any or all of these areas.

FAR 2.1.

COST

The amount of money expended (outlay) in acquiring supplies or services. The total cost of an acquisition includes:

The dollar amount paid to the contractor under the terms and conditions of the contract;

Any direct costs for acquiring the supplies or services not covered in the contract price;

Any cost of ownership not covered in the contract price;

The Government's overhead for awarding and administering the contract.

COST ACCOUNTING STANDARDS (CAS)

Standards for the measurement, assignment, and allocation of costs to contracts with the United States. These standards are established by the Cost Accounting Standard Board and incorporated in Part 30 of the FAR.

Section 26(a) of the Office of Federal Procurement Policy Act as amended.

COST ANALYSIS

The review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contract's cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

FAR 15.801.

COST OR PRICING DATA

All facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

Examples of cost and pricing data:

Vendor quotations;

Information on changes in production methods and in production or purchasing volume;

Data supporting projections of business prospects and objectives and related operations costs;

Unit-cost trends such as those associated with labor efficiency;

Make-or-buy decision.

FAR 15.801.

COST REALISM

A critical evaluation of a contractor's proposed cost to determine' if contractor's proposal reflects the buyer's requirement, or if the contractor understands the complexity of the proposed work.

COST REIMBURSEMENT CONTRACTS

Contracts that provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Contracting Officer.

FAR 15.603-i.

CURE NOTICE

A notice of intent to terminate a contract for default unless the contractor "cures" the problem within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer.

FAR 49.607.

DEBRIEFING

Informing unsuccessful offerors of the basis for the selection decision and contract award. This information includes the Government's evaluation of the significant weak or deficient factors in the offeror's proposal.

FAR 15.1003.

DEFECTIVE COST OR PRICING DATA

Cost or pricing data that are inaccurate, incomplete, or noncurrent.

FAR 15.804-7.

DEFENSE REGULATORY ACQUISITION COUNCIL (DRAC)

A council comprised of representatives of the Secretary of Defense, the Army, the Navy, the Air Force, the Defense Logistics Agency, and NASA. Among other responsibilities, this council, along with the Civilian Agency Acquisition Council (CAAC), maintains the FAR.

DELIVERY ORDER

An order made pursuant to FAR 52.216-18 against an indefinite delivery contract.

FAR 52.216-18.

DESIGN SPECIFICATION

A purchase description that establishes precise measurements, tolerances, materials, in process and finished product tests; quality control,'inspection requirements, and other specific details of the deliverable.

DISCHARGE OF A CONTRACT

The obligations incurred by the parties when they entered into the agreement are excused, and the parties are no longer bound to perform as promised.

DISCUSSIONS

Any oral or written communication between the Government and an offeror, (other than communications conducted for the purpose of minor clarification) whether or not initiated by the Government, that (a) involves information essential for determining the acceptability of a proposal, or (b) provides the offeror an opportunity to revise or modify its proposal.

FAR 15.601.

ELEMENTS OF A CONTRACT

Elements that must be present in a contract if it is to be binding. These include:

An offer;

Acceptance;

Consideration:

Execution by competent parties;

Legality of purpose;

Clear terms and conditions.

EVALUATION FACTORS

Factors in selection of an offer for award. See also Price-Related Factors and Technical Factors.

FAR 15.605.

EXCUSABLE DELAY

Delay in performing, or failure to perform a contract, arising from causes beyond the control and without the fault or negligence of the contractor.

FAR 52.249-8(c).

EXECUTIVE ORDER (EO)

An order issued by the President that establishes policies to be followed by executive agencies.

FACTFINDING

The process of identifying and obtaining information necessary to complete the evaluation of proposals. If a prospective bidder makes inquires relative to other than readily available general information, it may be necessary to obtain specific information by communication with technical or other personnel in order to determine the appropriate response. This may include factfinding sessions with offerors as provided in FAR 15.807a.

FAR 15.807a.

FEDERAL ACQUISITION COUNCIL

A council comprised of the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space Administration, and the Administrator of General Services Administration. Under the Office of Federal Procurement Policy Act, this council assists in the direction and coordination of Government-wide procurement policy and procurement regulatory activities.

FEDERAL ACQUISITION REGULATIONS (FAR)

Uniform policies and procedures for acquisition by executive agencies. The FAR is jointly prescribed, prepared. issued, and maintained by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration.

FEDERAL REGISTER (FR)

A daily Government publication that informs the public of proposed rules, final rules, and other legal notices issued by Federal agencies.

FEDERAL SPECIFICATIONS (FED SPECS)

Specifications and standards that have been implemented for use by all Federal agencies. GSA lists them in the index of Federal Specifications, Standards, and Commercial Item Descriptions.

FAR 10.001.

FEDERAL SUPPLY SCHEDULES

Indefinite delivery contracts established by the Genera! Services Administration with commercial firms. The Schedules are a required source for commonly used supplies and services, and provide Federal activities with a simplified process for obtaining such supplies and services at prices associated with volume buying.

FAR 8.104.

FEDERAL SUPPLY SERVICE (FSS)

A functional division of the General Services Administration. The FSS is responsible, on a . Government-wide basis, for acquiring and maintaining stocks of certain supplies; for acquiring office furniture and fixtures. and certain power and hand tools; for purchasing or leasing motor vehicles; and for establishing and maintaining "schedule" contracts.

FEE (OR PROFIT)

Money paid to a contractor over and above total reimbursements for allowable costs.

FAR 15.901 (a).

FIRM FIXED PRICE CONTRACT

A contract that establishes a price not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

FAR 16.202-i.

FIXED PRICE CONTRACT

A contract that establishes a firm price or. in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances. See also Firm Fixed Price Contract.

FAR 16.201.

FRAUD

A felonious act of corruption, or an attempt to cheat the Government or corrupt its agents.

FULL AND OPEN COMPETITION (FAOC)

FAOC means that all responsible sources are permitted to compete (although some sources may be excluded as provided in FAR 6.2).

FAR 6.003.

FUNCTIONAL SPECIFICATION

A purchase description that describes the deliverable in terms of performance characteristics and intended use, including those characteristics which are the minimum necessary to satisfy the intended use.

GENERAL ACCOUNTING OFFICE (GAO)

An office within the legislation branch that serves as "the watchdog for the Congress." Among other things, the GAO makes decisions on protests filed with it relative to any agency's handling of IFB's. audits agency programs and management, and makes recommendations on protests. These decisions are referred to as Comptroller General Decisions because the Comptroller is the head of GAO.

GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS (GSBCA)

The GSBCA is a board which, among other responsibilities, has statutory authority to hear protests filed with it relative to an agency's handling of IFB's for acquisition of automatic data processing (ADP) equipment or related resources.

GOVERNMENT PROPERTY i

All property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes both (1) Government-furnished property and (2) property acquired or otherwise provided by the contractor for performing a contract and to which the Government has title.

FAR 45.101.

GOVERNMENT FURNISHED PROPERTY

Property in the possession of, or directly acquired by, the Government and subsequently made available to the contractor.

FAR 45.101.

INDEFINITE DELIVERY CONTRACT

A type of contract used when the exact times and/or quantities of future deliveries are not known at the time of contract award. There are three variations of indefinite delivery contracts:

Definite-Quantity,

Requirements, and

Indefinite-Quantity.

FAR 16.501 (a).

INSPECTION

Examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

FAR 31.001.

INVITATION FOR BID (IFB)

The solicitation used in Sealed bidding.

LABOR HOUR CONTRACT

A variation of the time-and-materials contract differing only in that materials are not supplied by the contractor.

FAR 16.602.

LABOR SURPLUS AREA

A geographic area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A. as an area of concentrated unemployment, underemployment, or an area of labor surplus.

FAR 20.101.

LABOR SURPLUS AREA CONTRACTOR

A contractor that together with its first tier subcontractors will perform substantially in a labor surplus area.

FAR 20.101.

LETTER CONTRACT

A written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

FM 16.603-l.

LOAN GUARANTEES

Guarantees made by Federal Reserve banks, on behalf of designated guaranteeing agencies, to enable contractors to obtain financing from private sources under contracts for the acquisition of supplies or services for the national defense.

FAR 32.102(c).

MARKET RESEARCH

Collecting and analyzing available information about the entire market to satisfy minimum agency needs to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

FAR 10.001.

METHOD OF PROCUREMENT

The process employed for soliciting offers, evaluating offers, and awarding a contract. In Federal contracting, officers use one of the following methods for any given acquisition:

Small purchase;

Sealed bidding;

Two-step sealed bidding;

Negotiation.

MILITARY SPECIFICATIONS (MIL SPECS)

Specifications and standards maintained by DOD and published in the DOD Index of Specifications and Standards.

FAR 10.001.

NEGOTIATION

(1) A bargaining process between two or more parties seeking to reach a mutually satisfactory agreement or settlement on a matter of common concern.

(2) A method of procurement prescribed in Part 15 of the FAR that includes the receipt of proposals from offerors, permits bargaining, and usually affords offerors an opportunity to revise their offers before award of a contract. Bargaining, in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-and-take may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

FAR 15.102.

NONPERSONAL SERVICES CONTRACT

A contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control that usually prevails in relationships between the Government and its employees.

FAR 37.101.

OBLIGATION OF FUNDS

Legally binding commitments, such as contract awards, made by Federal agencies during a given period that will require outlays during the same or some future period.

OFFER

A legally binding promise, made by one party to another, to enter into a contractual agreement, if the offer is accepted. In Sealed bidding, offers made in response to Invitations For Bids (IFBs) are called , "bids." In Negotiated acquisitions, offers made in response to a Request for Proposals (RFP) are called "proposals. "

FAR 2.1.

OFFICE OF ENGINEERING SERVICES (OES). DIRECTOR

The regional OES Directors are responsible for administrative authorities relating to engineering, facilities planning, and construction activities (both Federally funded and direct Federal) and leasing in support of selected IHS operating compenents and other DHHS divisions. These PHS components include the IHS, HRSA, CDC, and NIH, and the DHHS divisions include ACF and HCFA.

OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP)

An organization within the Office of Management and Budget (OMB) that provides leadership and direction to Federal procurement programs.

OFFICE OF INFORMATION RESOURCES MANAGEMENT (OIRM)

A functional division of the General Services Administration. OIRM is responsible, on a Government-wide basis, for the acquisition of automatic data processing equipment and related services, establishment of ADP-related schedule contracts, and the provision of telecommunications systems and services.

OFFICE OF MANAGEMENT AND BUDGET (OMB)

An office that recommends and monitors Federal programs and funding levels, develops and issues Government-wide policy guidance on management concerns, and reviews proposed regulations.

OPTION

A unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

FAR 17.201.

OUTLAYS

Payments (e.g., checks issued, cash disbursed, and electronic fund transfers) by a Federal department , or agency.

PARTIAL PAYMENTS

Payments for items received and accepted by the Government when the contractor has>shipped part of the order. Parial payments are generally treated as a method of payment and not as a method of contract financing.

FAR 32.102(d).

PAYMENT BOND

A bond that ensures payments as required by law to all persons supplying labor or material in the performance of the work provided for in the contract.

FAR 28.001.

PERFORMANCE BOND

A bond that secures performance and fulfillment of the contractor's obligations under the contract.

FAR 28.001.

PERFORMANCE SPECIFICATION

A purchase description that describes the deliverable in terms of desired operational characteristics. Performance specifications tend to be more restrictive than functional specifications, in terms of limiting alternatives which the Government will consider and defining separate performance standards for each such alternative.

PERSONAL SERVICES CONTRACT

A contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, as Government employees.

FAR 37.101.

PREAWARD INQUIRY

Questions and comments from prospective offerors about specifications, terms, and conditions in a solicitation received prior to the opening date of the IFB or closing date of the RFP.

FAR 14.211 and 15.413.

PREBID/PROPOSAL CONFERENCE

A meeting held with prospective offerors before bid opening or before,the closing date for submission of proposals. Generally, the purpose of such meetings is to brief the offerors and explain complicated specifications and requirements. '

FAR 14.207 and 15.409.

PRICE

(1) A monetary amount given, received, or asked for in exchange for supplies or services.

(2) Cost plus any fee or profit applicable to the contract type. Price analysis includes comparing the various bid prices; comparing current bid prices with prices previously paid; and other price analysis techniques.

FAR 15.801.

PRICE ANALYSIS

The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

FAR 15.801.

PRICE COMPETITION, ADEQUATE

A competitive situation that exists if:

(1) Offers are solicited;

(2) Two or more responsible offerors that can satisfy the Government's requirements submit priced offers responsive to the solicitation's expressed requirements; and

(3) These offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

If price competition exists, the Contracting Officer shall presume that it is adequate unless:

(1) The solicitation is made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;

(2) The low offeror has such an advantage that it is practically immune from competition; or

(3) There is a finding, supported by a statement of the facts and approved at a level above the Contracting Officer, that the lowest price is unreasonable.

A price is "based on" adequate price competition if it results directly from price competition or if price analysis alone clearly demonstrates that the proposed price is reasonable in comparison with current, recent prices for the same, or substantially the same items purchased in comparable quantities, terms and conditions under contracts that resulted from adequate price competition,

FAR 15.804-3(b).

PRICE-RELATED FACTOR

When evaluating offers for award, any factor applied in identifying that offer which would represent the lowest total cost to the Government. Examples include costs of inspection, transportation, and the cost of making multiple awards. Any price-related factors must have been stated in the IFB.

FAR 14.201-a.

PROCUREMENT ACTION LEAD TIME (PALT)

The time between (1) acceptance of a PR by the Contracting Officer, and (2) award of the contract.

PROCUREMENT PLANNING

Upon acceptance of the Purchase Request. the plan developed by a CO for soliciting offers, evaluating offers, and awarding a contract.

PROFIT

See Fee.

PROGRESS PAYMENTS

Payments made under a fixed price contract on the basis either of (1) costs incurred by the contractor as work progresses under the contract or (2) on physical progress in accomplishing the work.

FAR 32.102(b).

PROJECT OFFICER (PO)

An agent of the Federal Government (see "Agency") involved in the acquisition process. A Project Officer .a selected and appointed by a Contracting Officer based on qualifications, experience, and training.

A Project Officer supports the Contracting Officer. As a representative of the program office, he/she must ensure that program requirements are clearly defined and that the contract is designed to meet them. A PO is responsible for ensuring that competitive sources are solicited, evaluated, and selected, and that the price the Government pays for the services it acquires is reasonable. The PO establishes quality standards, delivery requirements, and makes sure that these are met. While the contract is in force, the PO must ensure compliance with all contract provisions and applicable laws, and must report any deviations to the CO.

PROTEST

A written objection by an interested party to a solicitation, proposed award, or award of a contract. Interested parties include actual or prospective offerors whose direct economic interests would be affected by the award of a contract or by the failure to award a contract.

FAR 33.101.

PUBLIC BUILDINGS SERVICE (PBS)

A functional division of the General Services Administration. PBS has broad responsibilities for acquiring, through purchase or lease, buildings. and other real estate for Federal departments and agencies, and for the maintenance of public buildings.

PURCHASE DESCRIPTION

Describe the essential physical characteristics or functions required to meet the Government's minimum need.

FAR 10.001.

PURCHASE ORDER (PO)

An offer by the Government to buy certain supplies or nonpersonal services and construction from commercial sources, upon specified terms and conditions. the aggregate amount of which does not exceed the small purchase limitation.

FAR 13.101.

PURCHASE REQUEST (PR)

A requisition prepared by a requiring activity which (1) describes the supplies or services to be acquired, (2) certifies the availability of funds for the acquisition, and (3) includes other information, clearances, and approvals necessary for the CO to initiate the acquisition.

QUALITY

The extent to which the contract's deliverable satisfies the actual minimum needs of the end users.

QUALITY ASSURANCE (QA)

Functions, including inspection, performed to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

FAR 46.101.

REASONABLE COST

A cost is reasonable if, in its nature and amount; it does not exceed that which would be incurred by a prudent person in the conduct of comoetitive business.

FAR 31.201-3.

REQUEST FOR PROPOSALS (RFP)

The solicitation in negotiated acquisitions.

REQUEST FOR QUOTATIONS (RFQ)

A document used in soliciting quotations. RFQs are used when the Government does not intend to award a contract on the basis of the solicitation but wishes to obtain price, delivery, or other market information as the basis for preparing a purchase order or for planning purposes. A quotation received in response to an RFQ is not an offer and cannot be accepted by the Government to create a binding contract.

RESPONSIBLE OFFEROR

An offeror that meets the General and any Special Standards established under FAR 9.104.79. To be determined responsible under the General Standards, a prospective contractor must:

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- Be able to comply with the required or proposed delivery, or performance schedules. taking into consideration all existing commercial and governmental business commitments;
- Have a satisfactory performance record;
- Have a satisfactory record of integrity and business ethics;
- Have the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the prospective contractor and subcontractor);
- Have the necessary production, construction. and technical equipment and facilities, or the ability to obtain them; and
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

FAR 9.101.

RESPONSIVE

A bid that complies in all material respects with the IFB.

FAR 14.301(a).

RISK

The probability of not attaining the goals for which the party entered into a contract. For the contractor (seller), the principal business or financial risk is an unexpected loss of money on the contract. For the Government, the principal risks are that:

- The total cost of the acquisition will be higher than expected or unreasonable in relation to the actual costs of performance;
- The contractor will fail to deliver or will not deliver on time;
- The final deliverable will not satisfy the Government's actual need, whether or not "acceptable" under the terms and conditions of the contract;
- The Government's need will change prior to receipt of the deliverable.

SEALED BIDDING

A method of procurement prescribed in Part 14 of the FAR that employees competitive bids, public opening of bids, and awards. Under this method:

- The CO issues an Invitation for Bids (IFB);
- Offerors submit Sealed bids:
- The bids are publicly opened;
- Award is made to the responsible bidder whose bid, conforming to the Invitation for Bids, will be the most advantageous to the Government, considering only price and the price-related factors included in the Invitation.

FAR 14.101.

SERVICE CONTRACT

A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.

FAR 37.101.

SET-ASIDE

. ¡n acquisition reserved exclusively for offeror:; who fit into a specified category. Set-asides are commonly established for small businesses and busiresses in labor surplus areas.

FAR 19.501 (a) and 2d.201-1.

SHOW CAUSE NOTICE

A written ielinquency notice, sent to the contractor immediately upon expiration of the delivery period, advising that the Government is considering termination for default, and affording the contractor the opportunity to show cause why termination for default should not occur.

FAR 49.607.

SMALL BUSINESS CONCERN

A concern (including its affiliates) which is (1) independently owned and operated, (2) not dominate in the field of operation in which it is bidding on Government contracts, and (3) qualifies as a small business under the criteria and size standards in 13 CFR Part 121.

FAR 19.001.

SMALL PURCHASE

The acquisition of supplies, nonpersonal services, and construction at or below the "small purchase limitation" through the simplified procedures (e.g., imprest funds, purchase orders, and blanket purchase agreements) prescribed in Part 13 of the FAR.

FAR 13.101.

SMALL PURCHASE LIMITATION

The aggregate dollar amount of an acquisition at 9 below which small purchase contracting procedures may be used. As of the start of FY 1994, the small purchase limitation was $25,000. The small purchase limitation is established by regulation, and is prescribed in the FAR, Part 13.

SOLICITATION PROVISION

A term or condition used only in solicitations and applying only before contract award. Provisions provide information to prospective offerors on such matters as:

- Preparing and submitting offers;

- The evaluation of offers and the offeror's right to protest award.

FAR 52.101(a).

SOCIOECONOMIC OBJECTIVES

Any objective for an acquisition established by statute or by an Executive Order which is an addition to the innate goals (i.e., quality, cost, timeliness, risk, competition. and integrity) of the acquisition process.

SOLE SOURCE

A contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

FAR 6.003.

SOLICITATION

A document requesting or inviting offerors to submit offers, basically consisting of: (1) a draft contract. and (2) provisions on preparing and submitting offers.

SOURCE SELECTION

The process of soliciting and evaluating offers for award. Formal source selections usually involve the:

- Establishment of a group (e.g., a source selection board) to evaluate proposals;
- Naming of a source selection authority, who might be the CO, the requiring activity manager, or a higher level agency official, depending on the size and importance of the acquisition.
- Preparation of a written source selection plan.

FAR 15.612.

SPECIFICATION

A description of the technical requirements for a material, product, or service that includes the criteria for determining whether the requirements are met.

FAR 10.001.

STANDARD

A document that establishes engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices; includes any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products. or the interchangeability of parts used in those products.

FAR 10.001.

STATEMENT OF WORK (SOW)

The complete description of work to be performed under the contract. encompassing all specifications and standards established or referenced in' the contract.

STATUTE

A law enacted by the legislative branch of Government and signed by the President; identified by a Public Law number.

STOP WORK ORDER

Under the clause at FAR 52.212-13, a written order. to the contractor from the CO requesting the contractor to stop all, or any part, of the work called for by the contract for a period of 90 days after the order is delivered to,the Contractor, and for any further period to which the parries may agree.

SUBCONTRACT

Any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to the purchase order, changes, and modifications to purchase orders.

FAR 44.101.

SUBCONTRACTOR

Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor.

FAR 44.101.

SUPPLIES

All property, except land or interest in land, including (but not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels together with parts and accessories; aircraft, and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

FAR 2.1.

SYNOPSIS

(1) A brief description of the supplies and services to be acquired by contract. The Synopsis also provides prospective offerors with information on obtaining a copy of the IFB or RFP from the responsible contracting office. Synopses are published in the Commerce Business Daily (CBD).

(2) A notice of award published in the CBD.

FAR 5.201 and 5.301.

TECHNICAL FACTORS

Factors other than price-related used in evaluating offers for award. Examples include technical . , excellence, management capability, personnel qualifications, prior experience, past performance, and schedule compliance.

FAR 9.104-2 and 15.605.

TECHNICAL LEVELING AND TRANSFUSION

Negotiation tactics prohibited under FAR 15.610. Technical leveling means helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal. Technical transfusion means disclosing technical information supplied by one offeror (or otherwise pertaining to that offer) to other, competing offerors.

FAR 15.610(d).

TERMINATION FOR CONVENIENCE

Generally. the exercise of the Government's contractual right to completely or partially terminate a contract for the convenience of the Government.

FAR 49.002.

TERMINATION FOR DEFAULT

Generally, the exercise of the Government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

FAR 49.401.

TERMS AND CONDITIONS

All language in a solicitation and contract; including amendments, attachments, and referenced clauses and provisions.

TIME AND MATERIALS CONTRACT

A type of contract that provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profits and (2) material handling costs as part of material costs.

FAR 16.601 (a).

TIMELINESS

Delivery of requisitioned supplies to the end user's purpose, or performance of services at the time necessary for the end user's purposes.

TWO-STEP SEALED BIDDING

A method of procurement prescribed in Section 14.5 of the FAR. The two steps are as follows:

(1) The CO issues a request for technical proposals. Technical proposals received are evaluated. and, if necessary, discussed.

(2) Sealed bids are solicited from only those sources that submitted acceptable proposals under step one. Award is made as in Sealed bidding.

UNALLOWABLE COST

Any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.

FAR 31.001.

UNIFORM CONTRACT FORMAT

A format for preparing solicitations and contracts prescribed in FAR 14.201-l and 15.405-l.

UNSOLICITED PROPOSAL

A written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request.

FAR 15.501.

5-5 22 INDEX

Acquisition Planning, 5-l to 5-9
--Annual, 5-1 to 5-3; 54 to 5-6

Acquisition Planning Document (APD), 5-1, 5-3 to 5-4; 5-6 to 5-9

Anti-Trust Violations, 44

Architectural and Engineering Contracting, 10-l to IO-5
--Contract award, 10-3 to 10-4;
--Evaluation Board, 10-2;
-Selection of A&E Firm, 10-3

Area Director, 3-4

Automated Data Processing (ADP) Contracting, 12-1 to 12-22

Awarding Activities Offices, 1-2;

Blanket Purchase Agreements (BPAs), 8- 11 to 8-12

Buy Indian Policy, 6-l to 6-3
--Competition, 6-2
--Construction, 6-3; 1 l-4

Commerce Business Daily (CBD), 7-9; 11-5
--Synopsis, 7- 11

Compacts, Tribal Self-Governance, 20- 1 to 20-2

Conflict of Interest, 4-2

Contracting Officer (CO), 3-4; 3-5; 5-1; 5-6 to 5-9; 6-2; 7-2; 7-9; 7-13 to 7-22; 8-10; 8-12; 10-2 to 10-4; 11-4; 11-7 to 11-10; 15-1 to 15-3; 16-1 to 16-5; 17-1 to 17-10

Contracts (General), 7-1 to 7-23

Construction Contracting, 1 l-l to 1 l-l 1
--Bonds, 1 l-6 to 11-7
--Buy-Indian, 1 l-4
--Insurance, 1 l-7 to 1 l-8
--Planning, 1 l-2
--Preconstruction conference, 1 l-9 to 1 l-10

--Responsiveness versus Responsibility, 1 l-8 to 11-9

Contract Health Services, 13-1 to 13-48

Contract protests, disputes, appeals, 16-1 to 16-5
--Agency protests, 16-1 to 16-2
--GAO protests, 16-2
--GSA Board of Contract Appeals (GSBCA) protests, 16-2 to 16-3

Davis-Bacon Act, 1 l-2 to 1 l-3

Ethics, 4-1 to 4-8

Gratuities, 4-2 to 44

Head of the Contracting Activity (HCA), 3-2; 7-2

Imprest fund, 8-12 to 8-13

Independent Government Cost Estimate (IGCE), 7-6 to 7-7

Justification for Other than Full and Open Competition (JOFOC). 7-10 to 7-I 1

Lease of motor vehicles, 18-2

Lease of real property, 18-1

Lease of personal propeny, 18-1 to 18-2

Letter Contracts, 7- 16

Lobbying, 4-8

Negotiation, Contracting by, 7-13 to 7-16

Office of Federal Policy Act, 4-4; 4-7

Optional Form 347, 8-13 to 8-14

Pre-Negotiation Objectives Memorandum, 7- 19

Principal Official Responsible for Acquisition (PORA), l-3 to 1-4; 3-3 to 3-4; 7-2; 7-21; 15-l to 15-3

Procurement Integrity, 4-4 to 4-8

Project Officer (PO), 3-5 to 3-6; 5-l; 5-6; 5-7 to 5-9; 7-5 to 7-8; 7-14; 7-17; 1 l-10; 17-2 to 17-7; 17-9 to 17-10

Post-Award Guidance, 17-l to 17-11
--Audit responsibilities, 17-10 to 17-I 1
--"Changes" clause, 174 to 7-15
--Closeout, 17-9 to 17-10
--Contract administration, 17- 1 to 17-3
--Government property, use or acquire, 17-5 to 17-6
--Inspection and acceptance, 17-3 to 17-4
--Payments, 17-7 to 17-8
--Site visits, 17-3
--Termination for convenience, 17-8
--Termination for default. 17-8 to 17-9

Purchasing Agent, 34 to 3-5

Regulatory Framework for IHS Acquisitions, 3-1 to 3-2

Requisition/Request for Contract (RFC), 3-6; 7-6; 8-4 to 8-5

Sealed Bidding, 7-11 to 7-12
--Two-Step Sealed Bidding, 7-12 to 7-13

Self-Determination Contracts, 19- 1 to 19-2

Senior contracting Officer (SCO); 3-4; 5-4 to 5-6; 7-2; 9-1
SF 44 Purchase Order-Invoice-Voucher, 8- 13

SmalI and Disadvantaged Business Utilization Specialist (SADBUS), 3-6

Small Purchases, 8-l to 8-14
--Commercial Sources, 8-9
--Credit card use, 8-14
--Limitations on use, 8-2 to 8-3

--Services, Source Prioritieq, 8-9: to 8-10
--Small purchase limitation, Z-2 to 8-3
--Supplies, Source priorities, 8-5 to 8-9
-Ten Percent Rule, 8-3

Standards of Conduct, 4-l

Statement of Work (SOW), 7-5

Technical Evaluation, 7-17 to 7-18

Telecommunications Contracting, 12-l to 12-21

Unauthorized Commitments, 15-1 to 15-3
--Approval process, 15-3
--Non-ratified commitments, 15-3
--Ratification process, 15-1 to 15-2

Urban Projects Contracts, 14-1 to 14-3
--Program income, 14-2 to 14-3